

VIDEOTAPE DEPOSITION OF JOHN C. DIEZ, JR. 1/23/2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, RONALD BIENDSEIL,
RON BOONE, VERA BOONE, ELVIRA BUMPUS,
EVANJELINA CLEEREMAN, SHEILA COCHRAN,
LESLIE W. DAVIS III, BRETT ECKSTEIN,
MAXINE HOUGH, CLARENCE JOHNSON,
RICHARD KRESBACH, RICHARD LANGE,
GLADYS MANZANET, ROCHELLE MOORE,
AMY RISSEUW, JUDY ROBSON, GLORIA ROGERS,
JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP,
and TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
and RONALD KIND,

Intervenor-Plaintiffs,

v. File No. 11-CV-562

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity;
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,

[Caption Continued]

VIDEOTAPE DEPOSITION

JOHN C. DIEZ, JR.

Milwaukee, Wisconsin
January 23, 2012

Brandé A. Browne, RPR, CRR
Registered Professional Reporter

and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,
THOMAS E. PETRI, PAUL D. RYAN, JR.,
REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v. Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,
and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

Defendants.

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17	(The original exhibits were attached to the original transcript and copies were provided to counsel)	
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20	(A copy of Gaddie Exhibit No. 59 was attached to the original transcript and copies were provided to counsel. Gaddie Exhibit No. 59 was referred to on page 138)	
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25	(The original deposition transcript was filed with Attorney Wendy K. Arends)	

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VIDEOTAPE DEPOSITION of JOHN C. DIEZ, JR.,
a witness of lawful age, taken on behalf of the
Plaintiffs, wherein Alvin Baldus, et al., are
Plaintiffs, and Members of the Wisconsin Government
Accountability Board, et al., are Defendants, pending
in the United States District Court for the
Eastern District of Wisconsin, pursuant to subpoena,
before Brandé A. Browne, a Registered Professional
Reporter and Notary Public in and for the State of
Wisconsin, at the offices of Godfrey & Kahn, S.C.,
Attorneys at Law, 1000 North Water Street,
Suite 1700, City of Milwaukee, County of Milwaukee,
and State of Wisconsin, on the 23rd day of January
2012, commencing at 9:23 in the forenoon.

A P P E A R A N C E S

WENDY K. ARENDS, Attorney,
for GODFREY & KAHN, S.C., Attorneys at Law,
One East Main Street, Suite 500, Madison,
Wisconsin 53703, appearing on behalf of
Plaintiffs Alvin Baldus, et al.

JOSEPH W. VOILAND, Attorney,
for REINHART BOERNER VAN DEUREN S.C.,
Attorneys at Law, 1000 North Water Street,
Suite 2100, Milwaukee, Wisconsin 53202,
appearing on behalf of the Defendants.

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VIDEOTAPE DEPOSITION OF JOHN C. DIEZ, JR. 1/23/2012

<p>1 <u>A P P E A R A N C E S</u> (Continued)</p> <p>2</p> <p>3 JACQUELINE E. BOYNTON, Attorney, for LAW OFFICE OF JACQUELINE BOYNTON, 4 Attorney at Law, 2266 North Prospect Avenue, Suite 505, Milwaukee, Wisconsin 53202, 5 appearing on behalf of Plaintiffs Voces De La Frontera, Inc., et al.</p> <p>6</p> <p>7 <u>Also present:</u> Todd S. Campbell, CLVS Campbell Legal Video Company 8 417 Heather Lane, Suite B Fredonia, WI 53021 9 (262) 447-2199</p> <p>10</p> <p>11 THE VIDEOGRAPHER: We are on the 12 record. Seated before you is Mr. John Diez. 13 This is Video No. 1 of his video deposition, 14 taken pursuant to notice at the instance of 15 the plaintiff in the matter of Alvin Baldus, 16 et al. versus Members of the Wisconsin 17 Government Accountability Board, et al. This 18 matter is pending in the United States 19 District Court, Eastern District for the 20 State of Wisconsin, File No. 11-CV-162. This 21 deposition is taking place at the Reinhart 22 law offices, 1000 North Water Street, 23 Milwaukee, Wisconsin. The date is Monday, 24 January 23rd, 2012. The time is 9:23 a.m. I 25 am Todd Campbell, videographer with Campbell</p> <p style="text-align: center;">5</p>	<p>1 A Morning.</p> <p>2 Q My name is Wendy Arends, and I represent the</p> <p>3 plaintiffs in this matter. We appreciate you</p> <p>4 being here today. Have you been deposed before?</p> <p>5 A No.</p> <p>6 Q You've never been deposed before?</p> <p>7 A No, I have not.</p> <p>8 Q Okay. So let me go over a few basic ground rules</p> <p>9 for a deposition just so that we're both on the</p> <p>10 same page. I will make every attempt not to talk</p> <p>11 over you when you're speaking, and I would ask</p> <p>12 that you do the same as well so that we can ensure</p> <p>13 a clear record. In addition, I'll take a break</p> <p>14 about every hour and a half or so. If you would</p> <p>15 like to take a break prior to that time, just let</p> <p>16 me know or let your attorney know. Are you</p> <p>17 represented by counsel here today?</p> <p>18 A Yeah, Joe.</p> <p>19 Q And you're here pursuant to a subpoena?</p> <p>20 A Correct.</p> <p>21 MS. ARENDS: We'll mark this as an</p> <p>22 exhibit. Thank you.</p> <p>23 (Exhibit No. 82 marked for</p> <p>24 identification)</p> <p>25 Q Have you seen that document?</p> <p style="text-align: center;">7</p>
<p>1 Legal Video Company. The court reporter is</p> <p>2 Brandé Browne with For the Record Reporting.</p> <p>3 Would counsel please first introduce</p> <p>4 themselves, first for the plaintiff.</p> <p>5 MS. ARENDS: Wendy Arends.</p> <p>6 MS. BOYNTON: Jacqueline Boynton</p> <p>7 representing Voces de la Frontera, part of</p> <p>8 the complaint that is consolidated and</p> <p>9 indicated.</p> <p>10 MR. VOILAND: Joe Voiland from</p> <p>11 Reinhart Boerner Van Deuren for the</p> <p>12 Government Accountability Board.</p> <p>13 THE VIDEOGRAPHER: Thank you.</p> <p>14 Would the court reporter please swear in the</p> <p>15 witness.</p> <p>16</p> <p>17 <u>JOHN C. DIEZ, JR.,</u></p> <p>18 called as a witness, being first duly sworn,</p> <p>19 testified on oath as follows:</p> <p>20</p> <p>21 THE VIDEOGRAPHER: Ms. Arends.</p> <p>22</p> <p>23 <u>EXAMINATION</u></p> <p>24 By Ms. Arends:</p> <p>25 Q Good morning, Mr. Diez.</p> <p style="text-align: center;">6</p>	<p>1 A I have.</p> <p>2 Q And when did you receive that document?</p> <p>3 A I can check my e-mails, but it was probably</p> <p>4 Thursday of last week maybe. Wednesday or</p> <p>5 Thursday.</p> <p>6 Q And that's the subpoena that has your name on it?</p> <p>7 A Right.</p> <p>8 Q So Thursday of last week was the first time you</p> <p>9 saw it?</p> <p>10 A (Indicating)</p> <p>11 Q And who gave you the subpoena?</p> <p>12 A It was sent by e-mail.</p> <p>13 Q Can you please turn to second to the last page of</p> <p>14 the subpoena? It's marked Exhibit A, and you'll</p> <p>15 see that it's a request to produce different</p> <p>16 categories of documents. And I would also ask</p> <p>17 that you please answer the question with a verbal</p> <p>18 answer rather than a nod of the head?</p> <p>19 A Oh, I'm sorry.</p> <p>20 Q No problem. So you understand that the subpoena</p> <p>21 instructed you to bring these documents with you</p> <p>22 this morning?</p> <p>23 A Correct.</p> <p>24 Q And have you brought documents responsive to the</p> <p>25 subpoena?</p> <p style="text-align: center;">8</p>

VIDEOTAPE DEPOSITION OF JOHN C. DIEZ, JR. 1/23/2012

1 A Yes, I'm sorry.
2 Q And they're contained in this thumb drive?
3 A Correct, yes.
4 Q And these are all of the documents that are
5 responsive to the subpoena?
6 A Every document, including data as well.
7 Q And were there any documents that you withheld
8 based on privilege?
9 A No.
10 Q No documents were withheld?
11 A No documents held.
12 Q Okay. And so did you look through all of the
13 documents in your possession, custody, and
14 control?
15 A Every one that I could find. I mean, obviously a
16 lot of documents on the computer, but --
17 Q Did you look through those documents on your
18 computer?
19 A As many as I can. The answer would be yes, but
20 you know -- I mean, the answer is yes. How do I
21 know if I looked at every document once I got the
22 subpoena, I guess, is my question.
23 Q Well, I would think that you would do a thorough
24 search?
25 A I did a thorough search.

9

1 Q And made sure that there are no documents --
2 A Yeah.
3 Q -- that are still within your possession or
4 custody --
5 A I did a thorough search --
6 Q -- or control that you have not produced today?
7 Okay. Are there any documents related to your
8 work that you consider nonresponsive to the
9 subpoena?
10 MR. VOILAND: Object to the form of
11 the question.
12 Q Are there any documents related to your work in
13 this matter that you would consider nonresponsive
14 to the subpoena?
15 A No.
16 Q So are you 100 percent sure that these are all the
17 documents that could be responsive?
18 A I'm 100 percent sure.
19 THE VIDEOGRAPHER: Ms. Arends, can
20 we go off the record a second?
21 MS. ARENDS: Sure.
22 THE VIDEOGRAPHER: The time is
23 9:28. We are going off the record.
24 (Recess taken)
25 THE VIDEOGRAPHER: The time is

10

1 9:29. We are back on the record.
2 Q So John, did you -- you said you had documents on
3 your computer and you looked through your
4 computer; that includes your hard drive?
5 A Correct.
6 Q And your e-mail?
7 A Correct.
8 Q And were there hardcopy documents in any of your
9 hardcopy files?
10 MR. VOILAND: Object to the form of
11 the question. Wendy, I think he might think
12 you're asking about all of his work rather
13 than the work in this case. He doesn't have
14 a computer that he only uses for this case,
15 so --
16 MS. ARENDS: Well, I think it's
17 evident that it's documents related to this
18 matter. I mean, that's what it says in the
19 subpoena.
20 MR. VOILAND: You asked him about
21 all of his work, and you're not asking about
22 a specific part of the subpoena.
23 MS. ARENDS: I did specify his work
24 in this matter.
25 MR. VOILAND: In one question you

11

1 did, but now you're saying now, did you look
2 through your hard drive about everything in
3 there.
4 MS. ARENDS: Well, that relates
5 obviously to the question.
6 MR. VOILAND: It doesn't to him
7 clearly so. Just specify in the question
8 what it is --
9 MS. ARENDS: Well, let him speak
10 for himself what he's confused about.
11 Q Are you confused about whether or not I was asking
12 you about all of your work or just work in this
13 matter?
14 A Correct.
15 Q Well, just so we're clear, I'm asking about
16 documents related to work in this matter.
17 A Okay.
18 Q And so do you have any hardcopy documents that
19 you -- that related to your work in this matter?
20 A Uh-uh, everything via e-mail.
21 Q Okay. And have you provided us then with all of
22 the data or information that you considered or
23 relied upon in formulating your reports?
24 A I have.
25 Q So you said you've never been deposed before,

12

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1 that's correct?
2 A That is correct.
3 Q Have you reviewed any documents in preparation for
4 this deposition today?
5 A Only the ones that I produced.
6 Q And those are the ones on the thumb drive?
7 A Correct.
8 Q Have you discussed the deposition with anyone?
9 A We had dinner last night.
10 Q And since the time you prepared your report and
11 rebuttal report, which we will introduce into the
12 record later, have you been given any additional
13 material to review or consider?
14 A No, I have not.
15 Q Where do you currently live?
16 A Louisiana, Baton Rouge.
17 Q Okay. And how long have you lived there?
18 A Born and raised there and moved away in 2000 and
19 then moved back in 2007.
20 Q And where did you move in 2000?
21 A Washington, D.C.
22 Q And where do you currently work, John?
23 A I own Magellan Strategies, which is a data
24 company.
25 Q Okay. And what's the address of Magellan --

13

1 A It's 12491 Plantation Creek, Geismar,
2 Louisiana 70734.
3 Q Thank you. Do you have a resume?
4 A Yes, it's on the --
5 Q On the thumb drive?
6 A Yes, ma'am.
7 Q So did you graduate from college?
8 A Yes.
9 Q Which one?
10 A Nicholls State University.
11 Q And where is that located?
12 A It's located in South Louisiana, city called
13 Thibodaux.
14 Q I've heard of it.
15 A Yes.
16 Q And what year did you graduate?
17 A I graduated in '94.
18 Q Did you graduate with what degree?
19 A Political science.
20 Q Just one degree?
21 A Correct.
22 Q And have you attended graduate school?
23 A I have. I attended graduate school at the
24 University of New Orleans, and also
25 George Washington University.

14

1 Q And what -- did you graduate from both
2 universities?
3 A No, I did not.
4 Q Did you graduate from any, either
5 George Washington or New Orleans?
6 A No, ma'am.
7 Q And when did you attend -- when did you start
8 matriculating at University of New Orleans; is
9 that right?
10 A Yes, correct.
11 Q Okay.
12 A I would say '96.
13 Q That's when you started going to school there?
14 A Yes, and it was just part-time -- I mean, night
15 classes.
16 Q And what kind of classes did you take when you
17 were there?
18 A Political science.
19 Q Were you working towards a degree?
20 A Yes.
21 Q Which type of degree?
22 A Master's in political science.
23 Q And what made you leave University of New Orleans?
24 A It was just tough to be in graduate school and
25 have a full-time job.

15

1 Q And where you were working at the time?
2 A I was working for Southwest Computer Bureau.
3 Q I'll get to that in a minute. I just wanted to
4 finish up with the University of New Orleans. So
5 you left University of New Orleans. You stopped
6 taking classes there approximately what year?
7 A I went for one year, took one night class per
8 semester.
9 Q So you left there in 1997?
10 A Correct.
11 Q And you said you were employed full-time while you
12 were at the University of New Orleans?
13 A Correct.
14 Q What was your position at the Southwest Computer
15 Bureau?
16 A We managed voter files. And not just managed
17 them, we sold voter files and data.
18 Q So what does *manage voter files* mean to the
19 layperson?
20 A It's just a term where we build and construct
21 voter files. When you get them from the Secretary
22 of the State, they're never in the format that you
23 can resell them. You've got to enhance the data.
24 Q How do you do that?
25 A That depends on the client, but that could be

16

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1 anything CASS certifying it to NCOA'ing it.
 2 Q And what do those mean?
 3 A CASS certification is just taking the addresses
 4 and standardizing them to the post offices' basic
 5 standards. Sometimes when someone registers, they
 6 may put the name of the street and instead of
 7 saying Drive, they'll put Avenue, which is
 8 incorrect. There's software programs that go out
 9 there and correct these addresses to standardize
 10 them to what the post office expects it to be.
 11 And NCOA is National Change of Address.
 12 That's where you take the database, our list,
 13 bump it up against the post office's national
 14 change of address. And you know, basically if
 15 someone has moved in the last 48 months, it will
 16 update their address to their new one. And then
 17 there's other things. There's consumer data you
 18 can append to files. It just goes on and on as
 19 far as what all you can add to the voter file.
 20 Q So what was your title when you were at
 21 Southwest --
 22 A I was director --
 23 Q If you could just let me finish.
 24 A I apologize.
 25 Q It's okay. I appreciate it. You were director

17

1 of?
 2 A Of the political division.
 3 Q And that's how you -- what you started out as?
 4 A Yes.
 5 Q And then is that, the Southwest Computer Bureau,
 6 considered a nonpartisan -- is it a company, a
 7 nonprofit?
 8 A It was a company, and it was nonpartisan as far as
 9 who we sold our product to.
 10 Q And did you have any training in managing voter
 11 files prior to working at the Southwest Computer
 12 Bureau?
 13 A I wouldn't say -- no, no formal training.
 14 Q So while you were earning your undergraduate
 15 degree, you -- did you take any classes related to
 16 voter files or --
 17 A None existed.
 18 Q Did you take any statistics classes?
 19 A I did.
 20 Q How many did you take?
 21 A I took one sociology statistics and then a
 22 marketing research class, which was statistical
 23 driven.
 24 Q So the sociology of statistics?
 25 A Correct.

18

1 Q And a --
 2 A And a marketing research. It was the business
 3 school.
 4 Q John, do you have any formal training in research
 5 methods?
 6 MR. VOILAND: Object to the form of
 7 the question.
 8 Q Do you understand the question, John?
 9 A Yes. I took a course at UW on survey research.
 10 Q And when did you start matriculating at George
 11 Washington University?
 12 A I'd say around 2000 -- 2002 or 2003. I just took
 13 one course.
 14 Q So again, did you audit the class?
 15 A I was a student, got a grade, the whole nine
 16 yards. It's just I was a nonmatriculating
 17 student. I didn't register with an aim towards
 18 getting a master's. I just wanted to take one
 19 course.
 20 Q And that was the survey research course?
 21 A Correct.
 22 Q Okay. John, have you ever written or co-authored
 23 anything that was published in a peer-reviewed
 24 publication in the past four years?
 25 A No, ma'am.

19

1 Q Have you ever written or co-authored a book?
 2 A No, ma'am.
 3 Q And have you received formal training on the
 4 Graphic Information Systems, also known as GIS?
 5 A I have.
 6 Q All right. And when did you receive that
 7 training?
 8 A I mean, it has kind of been ongoing. I've
 9 attended training seminars, classes offered by
 10 Esri, which is ArcGIS. Also attended classes in
 11 Maptitude, which is another type GIS, and it has
 12 just been off and on.
 13 Q So when did you start this informal training?
 14 A It actually goes back to 1990. I worked for
 15 Dr. Ron Weber as a college student doing
 16 redistricting work.
 17 Q And what type of redistricting work did you do for
 18 Dr. Weber?
 19 A Mostly local parish redistricting work.
 20 Q And what did that entail?
 21 A Everything from moving geography around in the GIS
 22 system, you know, to some cases, since it was a
 23 college job, driving him to the actual event and
 24 making sure he had all his information with him.
 25 Q And so were you an assistant to him? Was there

20

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1 any title to this?

2 A No title. I was a part-time worker.

3 Q And had you taken a class of his?

4 A No, I hadn't. I had not taken a --

5 Q How did you come to know Dr. Weber?

6 A Dr. Weber was in business with my uncle, the guy

7 who actually owns Southwest Computer Bureau, and

8 that's how I found the job.

9 Q And your uncle's name is?

10 A Chester Diez.

11 Q So your training with regard to the GIS began in

12 1990, or was it more of your training with

13 redistricting work began in 1990?

14 A A combination of both. It's hard to do

15 redistricting without GIS software.

16 Q So did you help Dr. Weber -- what was Dr. Weber

17 working on that you were helping him? Was there a

18 specific project that you were working on?

19 A I think at that time he had contracts with 12, and

20 I don't know, I don't remember exactly, but more

21 than 10 parishes to do their local parish council

22 or county council, as you would refer to it here,

23 help them redo their redistricting.

24 Q And Dr. Weber was an employee of the University?

25 A At that time, actually, he was flying back and

21

1 forth. He was an employee at the University of

2 Wisconsin, if I'm not mistaken. But he was -- he

3 was a professor at LSU.

4 Q And what classes did he teach; do you know?

5 A I do not.

6 Q Going back to the training on the Graphic

7 Information Systems, aside from your work with

8 Dr. Weber, what other kinds of training do you

9 have with GIS?

10 A In addition to Dr. Weber, I've taken several

11 courses with Esri.

12 Q What is --

13 A Esri is ArcGIS. It's one of the major -- I guess

14 it's probably the leader in GIS software.

15 Q And how do you spell that, please?

16 A It's E-s-r-i.

17 Q And when you say our GIS?

18 A ArcGIS. It's the name of their product.

19 Q Okay. Is it the company that makes it?

20 A Correct.

21 Q And were these classes -- what approximate time

22 frame were these classes?

23 A Anywhere from 2000 to 2002 is when I took the Esri

24 courses.

25 Q And you took them in D.C.?

22

1 A Correct, well, Loudoun County is where.

2 Q And who were they held by?

3 A It was Esri, the corporation.

4 Q The company held the --

5 A Yes.

6 Q Thank you. These are things I'm not familiar

7 with, so I appreciate your patience with me.

8 A No problem.

9 Q In addition to the courses between 2000 and 2002,

10 were there other times that you received training?

11 A In 2010, I took just a -- because I wanted to see

12 some of the new features they've added to

13 Maptitude, which is another redistricting software

14 package, so I took a two-day course once again

15 taught by Maptitude. Just to be clear, Maptitude

16 is the name of the product. The company is

17 Caliper.

18 Q And how does Maptitude differ from Esri?

19 A They're similar in a lot of ways, but the

20 difference is Maptitude for redistricting is a

21 redistricting-specific software; whereas, the Esri

22 ArcGIS product is more of a global product that,

23 you know, doesn't have all the features you need

24 to just redistricting, so that would be the

25 biggest difference.

23

1 Q And so how long were you working at the Southwest

2 Computer Bureau for?

3 A I worked there until 1999, December of 1999.

4 Q So you started working there in 1996, correct?

5 A Correct, or '96, '97. Just off the top of my

6 head, I'd have to think about it, yeah.

7 Q And did you have the same position the entire time

8 you worked there?

9 A Yes.

10 Q And did your responsibilities change at all while

11 you were there?

12 A Not really.

13 Q So when you started working there, you were

14 managing voter files and --

15 A Selling voter --

16 Q -- selling voter files? Anything else you were

17 doing?

18 A We did some work for various -- for Ascension

19 Parish School Board where we built a GIS system

20 that allowed them to redraw student enrollment

21 districts, which is a little different than

22 political districts. We had the geocode. We had

23 a student database, which is basically assign

24 every address a latitude and longitude. We did

25 that, and you know, in addition to -- I probably

24

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1 should -- survey research, most things that you
2 would do in a campaign relative to data.
3 Q Such as?
4 A Everything from survey research to polling samples
5 to, you know, making selects out of a voter file.
6 Q And can you explain what each of these are, survey
7 research, polling samples, and making --
8 A Survey research is just polling, political
9 polling. Sample is just trying to poll a sample
10 from a voter file that resembles the subject
11 you're trying to survey, in essence.
12 Q And what was the third one? You mentioned another
13 responsibility.
14 A We did a lot of data analysis. You know,
15 generating reports for particular political
16 subdivisions, showed them which precincts, how
17 they normally vote over the last four or five
18 elections, various get out the vote analysis, who
19 should we put extra resources in as far as
20 turnout. Who should we just expect to turn out,
21 things like that. We had no one single product.
22 Our product was to figure out what the client
23 needed, and you know --
24 Q And in terms of survey research, polling samples,
25 data analysis, did these entail working with a

25

1 computer program as well?
2 A Yes.
3 Q So if I could just sum up your experience at
4 Southwest Computer Bureau, you managed voter
5 files, you sold voter files, excuse me, you built
6 a GIS system?
7 A Manage is just a word we use. We built --
8 constructed voter files. So just -- now that you
9 say it, I don't know how you manage a voter file,
10 doesn't make sense but yes, and we developed a GIS
11 system for the Ascension Parish School Board.
12 Q And how -- what does that entail, building a GIS
13 system?
14 A Well, we took a -- their student enrollment
15 database based on the addresses after we enhanced
16 the addresses to make sure that they were all
17 standardized, assigned latitudes and longitudes to
18 them so that they could actually sit there behind
19 map and circle a certain area, and it would tell
20 them exactly how many students they just took out
21 of that school district or how many students they
22 were about to put in a new school district. This
23 helps them. Also, too we worked with Dr. Talbert,
24 who at the time was at LSU, I think he's at Rice
25 now, to where we can actually append population

26

1 projections to the student enrollment. So that as
2 they made these moves, we can not only say this is
3 what it does for the school district today, but
4 based on the projections, this is what it does in
5 five years in high-growth areas.
6 Q So did you write code for this computer program
7 because it was specialized for student enrollment?
8 A No, I did not.
9 Q Do you know how to write code?
10 A Yes, I know how to write SBSS code, a little
11 Visual Basic, and to the degree that you would
12 refer to SQL as code, then -- I refer to those as
13 Syntax, but I don't --
14 Q Okay. So from 1990 to 1997, you were in school,
15 and you graduated --
16 A No, from 1992 -- 1995, I graduated. I worked for
17 Dr. Weber. And then of course, after graduating,
18 I had a six-month job with Billy Tauzin that was
19 part-time, and then that's when I went to work at
20 Southwest, about six months after I graduated.
21 Q And what did you do with Mr. Tauzin?
22 A Just case work, constituent services.
23 Q So you worked in his district office?
24 A Yes.
25 Q And then why did you leave the Southwest Computer

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1 Bureau?
2 A Moved to Washington, D.C.
3 Q Okay. So you found a job in Washington, D.C.?
4 A Actually, my wife found a job in Washington, D.C.,
5 and then I eventually found a job in
6 Washington, D.C.
7 Q So you took the leap and moved with her?
8 A Yeah, I did.
9 Q And you moved there in 2000 or 1999?
10 A Can I just ask a question real quick? I just want
11 to make sure my timeline is right because I really
12 didn't come in here thinking I'd have to go back
13 through my life history, and I just don't want to
14 say something that -- is it okay if I just kind
15 of --
16 Q Sure.
17 A If I write a timeline -- all right. Go ahead.
18 I'm sorry.
19 Q No, that's okay. If you need time, go ahead.
20 A No. I just want to make sure I don't get any
21 dates wrong.
22 Q I'm sure it's on your resume, but we don't have
23 that right now.
24 MR. VOILAND: You do have that.
25 MS. ARENDS: Well, we do, but

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1 obviously we don't have a hardcopy of it. So
2 it's difficult for me trying to piece it all
3 together, but I appreciate your patience.
4 Q So 2000 -- or 1999, you moved to Washington, D.C.
5 with your wife?
6 A Correct. In fact, January of 2000, I do remember
7 that.
8 Q Yes. Interesting time to be there.
9 A Yes, it was.
10 Q So when did you find a job when you got to
11 Washington, D.C.?
12 A I think I went to work for the RNC in around
13 February of that year, 2000.
14 Q And what were you hired to do at the RNC, which
15 is -- stands for?
16 A Republican National Committee. I was deputy
17 director of redistricting technology.
18 Q And did you know anyone at the RNC when you got
19 hired?
20 A I did not. But just to be clear, someone I knew
21 knew someone at the RNC.
22 Q That's how most of those jobs in D.C. work, don't
23 they? So you were deputy director of
24 redistricting technology at the RNC; can you
25 explain to me what your responsibilities were?

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1 A We helped construct the RNC's redistricting
2 database, redistricting GIS system, which
3 basically integrated political data with the
4 census data. We also worked with congressional
5 delegations, chiefs of staffs, things of that
6 nature, to kind of assist them in their
7 redistricting process or just to let them become
8 more familiar with the district and what they
9 could do and couldn't do.
10 Q And what did that entail exactly?
11 A Just literally sitting behind a computer with a
12 congressman and having him, you know, instruct you
13 what counties to move around so that he could get
14 an idea, you know, of what his options were
15 relative to his deviation.
16 Q What do you mean by his options relative to his
17 deviation?
18 A Well, if you need -- if you were a congressional
19 district and you need to pick 20,000 people up,
20 you have more than one option as far as where you
21 pick 20,000 people up.
22 Q And by pick up 20,000 people, what do you mean?
23 A Like, you know, if your congressional district is
24 20,000 down, and you pick up another county or you
25 add a county to your district, that's in essence

30

1 what I mean. It doesn't have to be a county. It
2 could be a piece of geography.
3 Q And are they just 20,000 registered voters or are
4 they --
5 A No, that's just a sample. Everybody's deviation
6 is different. Every district's deviation is
7 different.
8 Q So were you working with republican congressmen?
9 A Right.
10 Q And senators?
11 A No U.S. senators.
12 Q Just congressmen?
13 A Yeah.
14 Q Congress people?
15 A Yeah, because they don't redraw their districts.
16 Q I didn't know if you did anything else with --
17 A No.
18 Q So you worked with the congress people to help
19 them with their options in terms of their
20 redistricting process. Can you tell me more about
21 that?
22 A That sums it up. I mean --
23 Q So they would come to the RNC; they would come to
24 your office?
25 A We were called hat drawers. We just did what

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1 people requested us to or congressmen or chiefs of
2 staffs.
3 Q And this was with regard to enhancing their
4 chances of being re-elected?
5 A Everybody came in there with a different reason
6 for why they wanted to do X, Y, or Z. So there's
7 multiple reasons why they would want to come in
8 and move geography around.
9 Q But would that be one of them, to enhance their
10 prospects for re-election?
11 A That would be one.
12 Q And what were some other reasons they came in?
13 A It would be a multitude of reasons. Some people
14 wanted to pick their chiefs of staffs'
15 mother-in-law up. You know, just kind of
16 different reasons. They didn't always tell us why
17 they were in there. I mean, they just would come
18 in and ask us to do certain things. They never
19 come in and said *All right, I want to do X, Y, and*
20 *Z because of this.*
21 Q And so you helped them with this in terms of
22 mapping -- remapping their districts?
23 MR. VOILAND: Object to the form of
24 the question, Wendy. I mean, you say you
25 helped them with this. What is this?

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1 Q The redistricting process that we've been talking
2 about, you helped them with address their
3 questions about how do we pick up more people, how
4 do we move certain people into my district; is
5 that essentially --

6 A Correct.

7 Q -- what you helped them with?

8 A Correct. We were essentially, what's a good way
9 to put this, kind of their technical arm. They
10 didn't know the GIS system. So we were kind of
11 the intermediary between them and the GIS system.

12 Q And so you would perform -- put data into the GIS
13 system, since I'm not familiar with the GIS
14 system?

15 A Yes.

16 Q Could you explain to me what you did with the GIS
17 system when these congress people came in and
18 asked for your help?

19 A It was just simple as they would come in and say
20 *Hey, what happens if you move counties X, Y, and Z*
21 *here? What does it do to the population.*

22 Q And they would look at the entire population?
23 Would they break that out by race or --

24 A They looked at a whole gambit of things, and
25 everybody had their own, you know, what they

33

1 really wanted to see. It was just, you know, it
2 was a whole -- census data comes with over 200
3 variables. So they would look at just a host of
4 things, and everybody was a little different. So
5 there was no pre-canned package and this is what
6 you got to see.

7 Q So when you started in 2000, that was -- you
8 were -- February of 2000, that was during an
9 election cycle, so you were probably fairly busy?

10 A Actually, it was -- when we moved to D.C., it was
11 the week of the Bush inauguration, so it was a
12 break between 2000 and the 2002 cycle. I mean, so
13 it was kind of not necessarily in cycle when I
14 first started at the RNC.

15 Q So things didn't really pick up. Were you fairly
16 busy?

17 A We were busy because redistricting was around the
18 corner. You know, I mean, they released the data,
19 and so we were, you know, getting ready for that
20 process.

21 Q So how long were you at the RNC for as deputy
22 director of technology?

23 A I was deputy director of redistricting technology
24 for RNC from 2000 roughly, from that period they
25 hired me in February, until sometime in 2000. And

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1 then I moved to the strategy department for the
2 other two years, and so I was there for a total of
3 four years. I left in, I think, December --
4 December of '04, after the presidential election.

5 Q So sometime in 2000, you moved to the strategy
6 department?

7 A Yes.

8 Q And what was your title in the strategy
9 department?

10 A Senior data analyst.

11 Q And what were your responsibilities as a senior
12 data analyst?

13 A A lot of the same responsibilities I had when I
14 was at Southwest and redistricting. We dealt with
15 GIS technologies, built voter files, provided
16 analytical products for various people, whether it
17 was the NRCC or congressmen or the chairman of the
18 NRCC, the RNC.

19 Q And what would the head of the RNC ask you to do?

20 A Never asked me, but it filtered down to us. I
21 mean, it's just a whole gambit of things. But
22 like, you know, what was turnout in Wisconsin, you
23 know, and was that the highest it has ever been.
24 You know, just different questions relative to,
25 you know, political data. Did that answer your

35

1 question? I mean, there was just there's never
2 one single question. It was just off the wall.

3 Q Why did you make the move from the deputy director
4 of technology to --

5 A Redistricting was winding down.

6 Q -- strategy?

7 A Yeah, by 2002, there was really -- most every
8 state had finished or completed the redistricting
9 process. In fact, I think all of them were. The
10 only thing that was still active relative to
11 redistricting was litigation at that point.

12 Q So you actually made the move in 2002 from the
13 deputy director position to the strategy
14 department?

15 A Right.

16 Q Sorry, I thought it was 2000. And did you ever
17 help -- I mean, it sounds like you helped draw
18 redistricting maps while you were in the position
19 of deputy director?

20 MR. VOILAND: Object to the
21 question, no foundation.

22 Q You can answer the question. Do you understand
23 the question?

24 A Yeah. We drew lines, but I was never appointed
25 the guy in charge to say You come up with the

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1 solution, you know, that solves these problems.
 2 We were just basically the -- we had the
 3 background to work the GIS system based on what
 4 the congressman or some State party or somebody
 5 else asked us to do. So did that answer the
 6 question?
 7 Q Yes. Thank you. So in 2004, you left the RNC?
 8 A Correct.
 9 Q And where did you go in 2004 in terms of your
 10 work?
 11 A Public Opinion Strategies.
 12 Q And what is Public Opinion Strategies?
 13 A It's a polling company.
 14 Q And what was your title while you were there?
 15 A I was a project director.
 16 Q And as project director, what were your
 17 responsibilities?
 18 A We basically just managed projects for the
 19 partners, survey research projects, from A to Z,
 20 and then put the questionnaire together, up and
 21 done, come up with a sampling frame, a sample.
 22 Q Did you work on any type of redistricting
 23 projects?
 24 A Not while I was with them, no, ma'am.
 25 Q And how long were you at Public Opinion Strategies

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1 for?
 2 A I was there for about a year and a half.
 3 Q So you were at Public Opinion Strategies from the
 4 beginning of 2005?
 5 A Correct.
 6 Q To about the middle of 2006?
 7 A Correct.
 8 Q And in the middle of 2006, why did you leave
 9 Public Opinion Strategies?
 10 A Took a job in Louisiana and moved back home.
 11 Q And what was the job in Louisiana?
 12 A I was executive director of the Louisiana
 13 Committee for Republican Majority.
 14 Q And what does the Louisiana Committee For
 15 Republican Majority -- what do they do? What is
 16 its goal?
 17 A It is a state political action committee that
 18 formed when I moved back, and their goal was to
 19 help republicans pick up seats in the state
 20 legislature in Louisiana.
 21 Q And how do -- can I call it the LCRM for short?
 22 A That's fine.
 23 Q How do they accomplish that goal?
 24 A We go out and we help recruit candidates, do a lot
 25 of independent expenditure work, i.e., e-mail,

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1 radio, TV, in some cases, to promote republican
 2 candidates.
 3 Q And did your work there involve any redistricting
 4 work that --
 5 A No, ma'am.
 6 Q Using a GIS system?
 7 A We used GIS at that point to help target
 8 precincts.
 9 Q And by target precincts, what do you mean?
 10 A To get an idea of which precincts has historically
 11 voted for republican candidates, which ones
 12 didn't, which precincts were swing precincts. So
 13 we used it as an analytical tool too, but not as a
 14 redistricting tool.
 15 Q So did you help to found the LCRM, or you were
 16 brought in as the executive director when the LCRM
 17 was founded?
 18 A I was brought in once it was founded.
 19 Q And who founded --
 20 A A guy by the name of Boyse Bollinger and
 21 Joe Canizaro.
 22 Q And are they -- were they ever officeholders or --
 23 A No.
 24 Q -- a candidate for office in Louisiana?
 25 A I don't think -- I don't think so, maybe. They

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1 were rather older gentlemen, so maybe at some
 2 point in their life they were, but I don't think
 3 so.
 4 Q And how long were you at the LCRM for?
 5 A I did that for -- through the 2007 cycle. So my
 6 contract ended, I think, in December of '07.
 7 Q And how many republican seats did you pick up
 8 during your tenure at the LCRM?
 9 A We picked up eight during the election cycle, and
 10 then we picked up five more switches after the
 11 election cycle.
 12 Q So when you left -- when your contract ended in
 13 December of '07, what did you do at that point in
 14 terms of your professional career?
 15 A Yeah, that's when I started Magellan Strategies.
 16 Q And did you start it by yourself?
 17 A I started by myself, but we have a -- I have
 18 a partner, I guess, and you tell me legally
 19 if I have a partner, but who also has
 20 Magellan Strategies in Colorado. Our books are
 21 entirely separate. We're both separate. But we
 22 share resources as far as when he gets busy, he
 23 can dump some stuff on my staff and vice versa,
 24 but we're not legally partners.
 25 Q And what is -- what does Magellan Strategies do?

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1 A We do everything from redistricting work, GIS
2 work. We do survey research. We build voter
3 files and just general political data analysis.
4 Q With regard to redistricting work, what does that
5 entail for a client?
6 A Yes. I've done some work at the local level
7 helping cities and parishes, local parishes,
8 redraw their -- their council districts.
9 Q Have you ever done any work as a part of
10 Magellan -- has Magellan Strategies ever done any
11 work, redistricting work, outside of Louisiana?
12 A Yes.
13 Q And where have they performed this redistricting
14 work?
15 A I've done work in Mississippi. I've done work in
16 Virginia and Florida. I'm sorry. I knew there
17 was another one there. I just couldn't think,
18 Florida.
19 Q Magellan Strategies has performed redistricting
20 work in Mississippi, Virginia, and Florida?
21 A Correct.
22 Q In Mississippi, what type of redistricting work
23 have you done?
24 A I worked for the State party to help them develop
25 a plan.

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1 Q And by develop a plan, what do you mean?
2 A To develop a redistricting plan for their Assembly
3 or their State House.
4 Q And when were you first retained by Mississippi to
5 perform this work?
6 A I'm going to say in April of -- I'm not exactly
7 sure on the date. April of '11.
8 Q And who were you contacted by to perform this work
9 for Mississippi?
10 A It was the State Party contacted me,
11 Arnie Henniman.
12 Q And that's the State Republican Party?
13 A Correct.
14 Q And who was Arnie?
15 A He was the executive director or soon to be
16 executive director at that point.
17 Q And when you say develop a redistricting plan for
18 this Senate and the State House, what exactly did
19 Arnie ask you to do?
20 A It was just the State House.
21 Q Just the State House. I thought you said Senate.
22 Thank you.
23 A He had asked me to develop a plan that was fair.
24 Q And by plan, does he mean maps? What does a plan
25 entail?

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1 A Districts, I'm sorry, districts. House districts.
2 Q And so what did you start doing with regard to
3 developing a plan for the State House?
4 A Basically, began looking at deviations of
5 districts, getting an idea where there was no
6 longer enough population to sustain the current
7 number of districts, figuring out which areas had,
8 you know, extremely high growth and where new
9 districts would move to. That's only the first
10 step.
11 Q And then what do you do after that step, taking a
12 look at the deviations and high growth?
13 A You know, at that point, I mean, every client is
14 different. You know, we begin working with some
15 of the House members who were not happy with the
16 plans that were being circulated relative to the
17 districts.
18 Q And by plan, I thought you were the one developing
19 the plan?
20 A No. The Democrats were developing plans as well.
21 There wasn't just one plan as well. There were
22 various, understand correctly, special interest
23 groups that were developing plans.
24 Q But did you just develop one plan on behalf of all
25 the Republicans in the State House, or did you --

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1 A No.
2 Q -- present them with alternatives?
3 A Yes, there were probably total 50 different
4 variations of a plan.
5 Q That you as part of Magellan Strategies --
6 A Right.
7 Q -- developed? And who ultimately made the
8 decision to go with one out of those 50 plans on
9 behalf of the Republican party in the state of
10 Mississippi?
11 A To be honest with you, I was not at the meetings,
12 so I really don't know who made the final
13 decision. But it was their call who got -- you
14 know, but I wasn't there.
15 Q You just presented them with the different --
16 numerous different alternative plans?
17 A Right.
18 Q And why were there so many alternative plans that
19 you developed?
20 A You know, sometimes they were developing plans in
21 response to the various Democrat plans that kept
22 being released, so that is one reason. Some
23 reasons were, you know, they're trying to make a
24 region happier or satisfy someone's, you know,
25 definition of fairness in a certain region or

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1 within a certain caucus. So there's multiple
2 reasons why there were different variations. But
3 I'd say if you asked me to find the biggest one,
4 it was the variations were in response to the
5 different variations of the Democrats' plans.
6 Q And did the Republicans have control of the
7 Mississippi State House?
8 A They didn't at the time. They do now.
9 Q What else in terms of developing a plan did you
10 do? Did you work with GIS again?
11 A Yes, yes. We used GIS to develop the plan, to
12 draw the plan, I guess, is the best way to put it.
13 Q And you do that how?
14 A You sit behind a computer with the GIS system and
15 you begin moving geography around to get a
16 district within deviation, to be in sync with the
17 DOJ in Section 5 and Section 2.
18 Q And what other factors do you consider when you're
19 developing a plan aside from population deviation?
20 A It depends on the client. You know, there's a
21 whole host of them.
22 Q Can you --
23 A Yeah, I'm just trying to think out loud.
24 Q -- describe some of them?
25 A There's a million different scenarios of things

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1 you're trying to achieve. Sometimes you're trying
2 to achieve equitable distribution of districts.
3 You may have an area that is consistent with lost
4 population and areas that have consistently gained
5 population. So sometimes they want to make sure
6 that the districts are located where, you know,
7 the population dictates they should be located.
8 Q And what would be other factors, aside from
9 equitable distribution of districts?
10 A Another fact would be deviation, one man, one
11 vote, you know, make a tree within that. That's
12 all that I can think of at this point.
13 Q Do you consider factors like compactness?
14 A Yes. In fact, one factor -- I'm glad you brought
15 that up. One factor in Mississippi was they
16 wanted to split fewer precincts. The plan before
17 them had split 100s of precincts, and made
18 election day very confusing. So that was a
19 consideration that was kind of unique to
20 Mississippi. They wanted to draw a plan that
21 split as few precincts as possible.
22 Q Are there other factors aside from that?
23 A I can't think of any right now.
24 Q Mr. Diez, do you plan to testify at the trial of
25 this case?

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1 A I have no plans of testifying, have not been told
2 that I would be testifying, so no.
3 Q So you've never been told that you would or would
4 not be a witness?
5 A Never been told I would or would not be a witness.
6 Q So you don't know at this point whether or not you
7 would be testifying at trial in February?
8 A Correct.
9 Q With regard to the redistricting effort, the 2011
10 redistricting effort in Wisconsin, do you have any
11 role with respect to that outside of this
12 litigation?
13 A No.
14 Q So you've never been contacted by the Republican
15 party in Wisconsin with regard to redistricting
16 effort in Wisconsin for 2011?
17 A I have not.
18 Q When were you first contacted regarding this
19 litigation?
20 A Let me think for a second. It was right after
21 Christmas, if I'm not mistaken.
22 Q And who were you contacted by?
23 A It wasn't Patrick at that time. I'm trying to
24 think of the guy who first started. Was it
25 Daniel? Can he help me out on this?

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1 Q It's based on your --
2 A He's the one who contacted me. Then Patrick is
3 the one who took it from there.
4 Q So someone from Reinhart contacted you?
5 A Correct.
6 Q Around December of 2011?
7 A Correct, correct.
8 Q Regarding what exactly?
9 A And the dates are to the best of my recollection.
10 Q They contacted you, and what did they ask you to
11 do?
12 A They wanted compactness reports ran, wanted to
13 look at -- compare open seats and pairings, and
14 then the deferred voter study.
15 Q And they asked you for all of this in December of
16 2011?
17 A Correct, and those dates are approximate, and
18 they're in the e-mails when they actually
19 requested.
20 Q Unfortunately, I don't have --
21 A Yes.
22 Q -- access to the e-mails. But they contacted you
23 by phone or by e-mail?
24 A E-mail.
25 Q And had you -- do you know anyone at Reinhart

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1 previous to them contacting you?
 2 A No, ma'am.
 3 Q I just wanted to go back really quickly. With
 4 regard to your redistricting work in Virginia and
 5 Florida, we'll start with Virginia.
 6 A Okay. Virginia was handled by someone in my
 7 office. So the involvement as far as me answering
 8 questions what he did from day to day and what
 9 type of questions they asked, I don't know. And
 10 in Florida -- I'm sorry.
 11 Q Can you go back to Virginia?
 12 A Yeah.
 13 Q Do you know what they retained Magellan
 14 Strategies, your firm, to do with regard to the
 15 Virginia redistricting process?
 16 A To be their technical arm in drawing plans, yep.
 17 Someone who knew the software package.
 18 Q And who retained you with regard to the Virginia
 19 2011 redistricting effort?
 20 A It was the law firm, and once again, it wasn't my
 21 client, so I'm not really familiar with it, but
 22 there was a law firm there who retained them.
 23 Q And whose client was it? I mean, it was your
 24 firm?
 25 A Magellan -- Jay Vicknair is the one, the guy who

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1 works for me, is the one who just handled it from
 2 start to finish.
 3 Q Okay. So the folks in the Republican party of
 4 Virginia contacted your employee?
 5 A Correct.
 6 Q Regarding Magellan Strategies helping them draw
 7 plans?
 8 A Right.
 9 Q Develop maps?
 10 A And we got to know the lawyer during the Louisiana
 11 redistricting process, so that's how the
 12 relationship was forged. It wasn't just a cold
 13 call.
 14 Q And what law firm was it?
 15 A Vogel, Joe Vogel's firm.
 16 Q So would you say that the work that was performed,
 17 I know you don't have firsthand knowledge, but I'm
 18 sure you had conversations with your employee
 19 about this, that was performed with regard to the
 20 Virginia redistricting plan similar to what you
 21 did in Mississippi, or was the scope of the work
 22 the same?
 23 A I'd have to guess it was very similar, but I
 24 wasn't there, so I don't, you know --
 25 Q Was it just with regard to the Virginia State

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1 House?
 2 A Just the State House.
 3 Q And that was for the 2011 redistricting, correct?
 4 A Correct.
 5 Q With regard to Florida, is it with regard to the
 6 2011 redistricting process there as well that your
 7 firm --
 8 A Correct.
 9 Q -- provided services?
 10 A Yes.
 11 Q And what services did your firm provide?
 12 A Strictly technical. We went and spent two or
 13 three days with their staff teaching them GIS, and
 14 then the follow-up was phone support. They get
 15 behind and can't figure out how to do something,
 16 they would call. So we were technically the
 17 support for the State party.
 18 Q And by State party, you mean the Republican State
 19 party?
 20 A Correct.
 21 Q And who were you retained by?
 22 A State party.
 23 Q Were you hired by the State party?
 24 A Correct.
 25 Q And what is technical support for the House and

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1 the --
 2 A I think it was just for their staff in general.
 3 I'm assuming they would draw plans for all
 4 different, you know, for all -- for House, Senate,
 5 Congressional, but I don't know. It wasn't for
 6 one -- they didn't hire us to teach for one
 7 specific body, but --
 8 Q Do you know who you were teaching when you were
 9 teaching staff?
 10 A Yeah, it's Frank Terrafirma.
 11 Q And who is he?
 12 A I honestly don't know his title. He works for the
 13 State party.
 14 Q And so what were you teaching them?
 15 A Basic, you know, from start to finish, how to open
 16 up a plan, how to create a plan, just the basic
 17 things you need in order to, you know, be involved
 18 with the redistricting process.
 19 Q And so what would that entail in terms of
 20 training?
 21 A It's just every technical thing that you would
 22 need to know regarding the Maptitude software
 23 relative to drawing districts and participating in
 24 the redistricting process. So it could be
 25 anything from how to open a plan, how to create a

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1 plan, how to close a plan, how to, you know, make
2 the lines smaller, thicker.
3 Q And did you teach them with regard to GIS or just
4 Maptitude?
5 A Just Maptitude, which is a GIS package.
6 Q So your -- the scope of your services for the
7 Florida redistricting process in 2011 was purely
8 technical?
9 A Technical.
10 Q And how long did your engagement last?
11 A It's ongoing. I mean, they don't call as much.
12 They seem to be picking it up, but --
13 Q And with regard to Virginia, are you still -- is
14 your firm still involved in the redistricting
15 process there?
16 A No.
17 Q And with regard to Mississippi, when did your --
18 did your involvement with the Mississippi
19 redistricting process end as well?
20 A Correct.
21 Q And when did it end?
22 A I would say at the conclusion of their session,
23 and I don't remember the exact date of that, but
24 when the session was over with, the redistricting
25 session in 2011, then that was it.

53

1 Q So with regard to the Mississippi redistricting
2 work, did Magellan Strategies get paid by the
3 Republican party?
4 A Correct.
5 MS. ARENDS: I'm going to mark
6 this -- actually, you know what, that was an
7 exhibit in the Foltz deposition.
8 MR. VOILAND: Before we start
9 getting into -- if could we take a quick
10 break, bathroom break.
11 MS. ARENDS: Sure. Why don't we
12 break now. That works for you.
13 THE VIDEOGRAPHER: The time is
14 10:25. We are going off the record.
15 (Recess taken)
16 THE VIDEOGRAPHER: The time is
17 10:37. We are back on the record.
18 Q Mr. Diez, what is the document in front of you?
19 A This is the deliverable -- appears to be the
20 deliverable of what I was requested by the client
21 to provide.
22 Q And what is that that you were requested by the
23 client to provide?
24 A It is -- it is a calculation of the measure of
25 compactness. It is a core constituency report,

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1 assessment of the pairings in the House and
2 Senate, and then it is a political report by
3 district.
4 Q And that was prepared by you?
5 A Correct.
6 Q And when was that prepared for the client?
7 A That was prepared probably late January -- I mean,
8 late December, early January.
9 Q What is the date on that report?
10 A December 14th.
11 Q Did you prepare that prior to December 14th?
12 A Yes. I mean, obviously.
13 Q Like a week prior, two weeks prior?
14 A I would say three weeks prior, but it wasn't
15 completed in one day, so it was an ongoing
16 process.
17 Q And you said you were first contacted by Reinhart
18 by e-mail and --
19 A He may have called me.
20 Q By Daniel?
21 A Daniel -- Dan Kelly, Daniel Kelly.
22 Q And you said he may have called you?
23 A He may have called first. I don't know what he
24 did first.
25 Q And when did he contact you?

55

1 A I'd have to go back and look at the e-mails. I
2 mean, I don't want to get too caught in dates
3 because it's not something I thought about. I
4 wish I would have done that, so --
5 Q Well, you can just tell me approximately.
6 A Okay, and you're fine with that. If this report
7 was produced on the 14th of December, it would
8 have to be prior to that, so I would say end of
9 November, beginning of December.
10 Q And when Daniel Kelly first contacted you with
11 regard to preparing a report for this matter, what
12 did he ask you to do initially with regard to this
13 litigation?
14 A He just wanted me to see the data from the State,
15 which he overnighted and run the compactness
16 reports, run the core constituency report, run the
17 political report, and get an assessment of the
18 pairings, and come to the pairings.
19 Q And how much are you paid per hour for generating
20 these reports?
21 A I charge \$125 an hour.
22 Q So what work did you begin with in regard to this
23 report that you developed for the client?
24 A Basically took the data that he sent me from the
25 State, and the first step is to get it into my GIS

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1 system.

2 Q What data did he send you from the State?

3 A He sent me the block assignment files for Act 44

4 and 43, the 2010 ward file, and also he just sent

5 me, or I already had it, all of the 2010 census

6 TIGER files.

7 Q And what are block assignment files?

8 A Block assignment file is typically has two columns

9 in it. One column has the block ID, which is a

10 15-digit code for every block in a particular

11 state, and then the second column is the district

12 that that block is assigned to.

13 Q And so what does that show, the block assignment

14 file?

15 A That is the easiest way to get a plan into a GIS

16 system.

17 Q And how do you get that data into the GIS system?

18 Does someone manually input it?

19 A You import the block assignment file.

20 Q So it comes on a flash drive, electronically or --

21 A You could e-mail it. It's not a big file.

22 Q And then you input it into a program by importing

23 it electronically?

24 A Correct.

25 Q And when you do that, what does it do? What

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1 function does it serve in the GIS system?

2 MR. VOILAND: Object to the form of

3 the question. Maybe you could read the

4 question back.

5 MS. ARENDS: Actually, you could

6 just ask him if he -- do you understand the

7 question?

8 THE WITNESS: Read it back just to

9 make sure.

10 (Question read)

11 MR. VOILAND: Object to the form of

12 the question.

13 Q With regard to the block assignment files for

14 Acts 43 and 44, when you input those files -- when

15 you import those files into the GIS system, what

16 are you -- what function are you performing? What

17 do those files show you in the GIS system?

18 MR. VOILAND: Object to the form of

19 the question.

20 Q How are you transforming that data in the GIS

21 system?

22 MR. VOILAND: Object to the form of

23 the question.

24 Q You can go ahead and answer if you understand.

25 MR. VOILAND: You've asked him

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1 three different questions.

2 Q I'm just trying to understand what a block

3 assignment file is, and when you put it into the

4 GIS system, what does it spit out? What is the

5 final product?

6 MR. VOILAND: Object to the form of

7 the question, no foundation.

8 A It creates the boundary files for the plan.

9 Q And what's a boundary file?

10 A A line file, a geographic file that depicts the

11 boundaries for whatever plan you imported.

12 Q So does that allow you, once you imported the

13 block assignment files into the GIS system, does

14 that allow you to perform other calculations and

15 measurements?

16 A Correct.

17 Q So it acts as kind of a foundation for performing

18 other measurements?

19 A First step, correct.

20 Q Thank you. So when you received the block

21 assignment files, you imported them into the GIS

22 system, and then what did you do next with the

23 data that was sent to you, the 2010 ward file and

24 the 2010 census TIGER file?

25 A Once I had them in, I calculated the measures of

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1 compactness.

2 Q You calculated them or the --

3 A The machine, Maptitude, calculated them.

4 Q Maptitude calculated --

5 A Correct.

6 Q And so in addition to the block assignment files,

7 the 2010 ward file?

8 A Correct.

9 Q What is that comprised of?

10 A The State had updated some -- some wards, and so

11 that was just the most current file.

12 Q The State updated the wards?

13 A I'm assuming the State or the Board. I'm not

14 sure. Honestly, I don't know where that file --

15 who produced that file, but it was sent as

16 official data from the State, but I don't know

17 which agency. Whether it was the Legislative

18 Technology Bureau or who.

19 Q And did the 2010 census TIGER file also come from

20 the client, but really came from the State

21 Legislative Technology Bureau?

22 A Correct.

23 Q So all three of those files, the block assignment,

24 the 2010 ward file, and the 2010 census TIGER

25 file --

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1 A Correct.

2 Q -- came from the State? And what is a 2010

3 census TIGER file? What data is that comprised

4 of?

5 A It's really census TIGER files. It's multiple

6 files. It's the geographic files for just about

7 every level of geography that they collect census

8 data for. And in addition to it being a

9 geographic file, it has population data appended

10 to each piece of geography. So it is both the

11 geographic file with the demographics attached to

12 it.

13 Q So the block assignment file, the 2010 ward file,

14 and the 2010 census TIGER files, are those in the

15 thumb drive that was produced today?

16 A Yes.

17 Q Did you receive any other data from the client,

18 Reinhart?

19 A No. Yes, the incumbent layer.

20 Q And what is the incumbent layer?

21 A Incumbent layer was a file that had every member

22 of the House in the senate in Wisconsin with their

23 address that was geocoded, essentially assigned a

24 latitude and longitude.

25 Q So every member of the Senate and the Assembly as

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1 well as the Congressional?

2 A It did not include Congressional.

3 Q And did all these files come in an e-mail to you?

4 A They were sent overnight.

5 Q And were they sent overnight in a flash drive?

6 A Yes.

7 Q And were they overnighted from your client,

8 Reinhart, or from the Legislative Technology

9 Services Bureau?

10 A I don't know. But real quick too, the incumbent

11 file was later e-mailed to me.

12 Q So just the three block 2010, okay, files were.

13 Incumbent layer was e-mailed to you from whom?

14 A Adam Foltz.

15 Q And that was e-mailed directly to you by

16 Adam Foltz?

17 A Correct.

18 Q And did you know to expect that incumbent layer

19 data from Adam Foltz?

20 A Correction. Actually, that file may have came

21 from either Patrick or Daniel. I don't know who

22 sent it to me. At some point, they received it

23 from him.

24 Q Did you ever have any contact with Adam Foltz

25 directly, either by e-mail or telephone?

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1 A Not that I recall.

2 (Exhibit No. 83 marked for

3 identification)

4 Q I'm going to show you this document. Can you

5 identify that document for me, please? It's

6 marked as Exhibit No. 83.

7 A Yes.

8 Q What's the date of this document?

9 A December 29th.

10 Q And what is this document?

11 A The file -- one of the reports that we sent them

12 was the compactness measures for the Senate, not

13 the House. So we just ran it again and resent it.

14 Q So this is a correction to your initial report?

15 A Correct.

16 Q December 14th, 2011 report? So these, the

17 December 14th report and the December 29th

18 corrections, those comprise one report for the

19 client?

20 A I'm sorry, say it again.

21 Q The December 14th report and the December 29th

22 corrections, those comprise one --

23 A Correct.

24 Q -- report for the client?

25 A Correct.

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1 Q How many other reports did you prepare for the

2 client?

3 A Deferred voting study.

4 Q You prepare any other reports for the client?

5 A Just those two basic reports.

6 Q Do you anticipate preparing any additional reports

7 or memos or providing any additional services

8 between now and the trial in February in this

9 matter?

10 A I haven't been asked to, and I do not anticipate.

11 Q Have you provided any other services in connection

12 with this litigation beyond preparing the two

13 reports that you --

14 A No.

15 Q -- delivered to the client? If you'll please

16 look at the first page of the December 14th

17 report. With regard to compactness, which is

18 discussed on the first page of the December 14th

19 report, what does compactness measure with regard

20 to redistricting?

21 A Compactness just in and of itself measures how, in

22 essence, how compact or how -- it's a measure

23 of gerrymander. I mean, are these districts

24 concise, but to answer your question, I guess,

25 further is there's multiple measures of

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1 compactness. So some of them measure compactness
2 relative to the ratio of the area, to the district
3 via a circle. Some of them are perimeter-based,
4 so they measure the perimeter. Some of them are
5 population-based where they actually measure the
6 ratio of the population to the area. But the
7 bottom line, they measure how compact the
8 districts are, all of them, in just different
9 methodologies.
10 Q In compactness an important factor in
11 redistricting?
12 MR. VOILAND: Object to the form of
13 the question. Beyond the scope of this
14 witness.
15 Q Mr. Diez, did you render any conclusions with
16 regard to your measurements of compactness in your
17 December 14th report?
18 A No, ma'am.
19 Q So with regard to measuring compactness, what
20 exactly did you do to measure compactness?
21 A It's basically a procedure you run in Maptitude in
22 the GIS software that computes them for you.
23 Q And what data, underlying data, do you use to
24 measure or compute compactness in a Maptitude
25 software?

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1 A I don't know.
2 Q Have you only ever used Maptitude to measure
3 compactness?
4 A Correct.
5 Q So when you input the underlying data into
6 Maptitude to measure compactness, it automatically
7 just calculates the seven different measures?
8 A You have to request what measures you want, but
9 yes.
10 Q So you have to request -- thank you. So can you
11 explain to me -- turning to the back of the report
12 where these tables are, and it's not numbered. So
13 it's the first page that begins measure of
14 compactness, and it's right after the core
15 constituency report.
16 A Okay.
17 Q Can you explain to me what this table shows that
18 says measures of compactness, and it says plan
19 name, KUR00LD?
20 A Yes, this is the compactness for the current plan.
21 When I say current, I mean the plan -- the
22 boundaries that were in effect during the last
23 decade. To the left are all the 99 districts, and
24 under each column is the computed compactness for
25 that particular method.

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1 A At a minimum, you have to have the census block
2 file.
3 Q And the census block file was provided to you by
4 Reinhart?
5 A Correct.
6 Q Do you use any other underlying data to compute
7 the measures -- different measures of compactness?
8 MR. VOILAND: Object to the form of
9 the question, multiple. Are you asking him
10 about one? Are you asking him about in
11 general all of the different --
12 MS. ARENDS: No, I'm asking him was
13 there any other data that he inputted into
14 Maptitude --
15 A No.
16 Q -- to generate measures of compactness other than
17 the census block file?
18 A And the boundary file that it's actually trying to
19 measure.
20 Q So how many different measures of compactness are
21 there?
22 A In Maptitude, there's seven, if I'm not mistaken.
23 Q If you used a different software program, would
24 there be different measures of compactness than
25 those that are provided in the Maptitude software?

66

1 Q So for example, in District 1 under the first
2 column, which says Reock, it says .48?
3 A Correct.
4 Q What does that number mean in terms of compactness
5 of District 1?
6 A That is the compactness. This particular
7 procedure measures compactness from zero to 1, and
8 so --
9 Q So 1 being? What does 1 represent?
10 A Most compact.
11 Q Most compact. And with regard to the Schwartzberg
12 test in column 2?
13 A Uh-huh.
14 Q I'm still on the same page.
15 A Yep.
16 Q With District 1.
17 A It's -- that's a different measure. It doesn't
18 measure from zero to 1.
19 Q What does 1.19 under the Schwartzberg column for
20 District 1 mean in terms of compactness of the
21 district?
22 A That's -- that method's product.
23 Q Does it mean it's close to being compact, in the
24 middle of compactness, not compact?
25 MR. VOILAND: Object to the form of

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1 the question.
2 Q What is the scale of the Schwartzberg test in
3 terms of where does it show -- how does it define
4 what's the most compact versus what's the least
5 compact?
6 A Well, what that would show you is that District 1
7 is probably more compact than -- it's relative.
8 You can compare it to some other districts, but I
9 can't quantify it for what does that mean for
10 compactness because --
11 Q Well, is it the higher the number, the more
12 compact?
13 A Oh, Schwartzberg test, it is -- yeah, 1 is most
14 compact.
15 Q Well, if it's over 1, what does that mean, as most
16 of these are over 1?
17 MR. VOILAND: Object to the form of
18 question, overly broad.
19 A Closer to 1 is most compact.
20 Q For example, in District 26, if it's 3.5 under
21 the Schwartzberg column, that would seem to be
22 almost -- it allows for --
23 A It's less compact. It's 1 and above. So 1 is the
24 most compact, according to the -- I have in the
25 beginning the definitions and how they're

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1 measured.
2 Q Right. And I guess I was just confused with the
3 definition of the Schwartzberg test. And I was
4 asking you because I'm not an expert in this
5 field, so I don't understand what the Schwartzberg
6 test measures or how it measures compactness?
7 A And I'm not an expert on how they measure them.
8 Q So you don't know what this 1.19 means in terms of
9 how compact this District 1 is?
10 A Yeah, it means District 1 is more compact than
11 District 2. But as far as the formula behind what
12 all goes into calculating these things --
13 Q So the lower the number in the Schwartzberg
14 column, the more compact something is?
15 A According to -- yes.
16 Q A district is?
17 A According to the definition.
18 Q Is the Schwartzberg test a -- it says here it's a
19 perimeter-based measure; is that correct?
20 A If that's what it says, yeah.
21 Q So are you familiar with the different tests and
22 what they mean generally?
23 A Generally, but I wasn't provided to assign meaning
24 to any of this other than to generate the scores.
25 That -- that is what I was tasked to do.

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1 Q With regard to the perimeter test in column 3,
2 obviously it's a measure of perimeter, correct?
3 A Correct.
4 Q And with regard to the numbers in District 1, the
5 perimeter test measures 275.79. So on a scale,
6 where would that lie on a scale of compact, the
7 most compact versus the least compact?
8 A It's relative.
9 MR. VOILAND: Object to the form of
10 the question.
11 Q Is there like a zero being the least compact, 1
12 being the most compact type of measurement for
13 this perimeter test?
14 A Yes, they have meaning, but --
15 Q And what does the perimeter test show beyond
16 compactness? Does it show anything else besides
17 another measure of compactness?
18 A No. I mean, it measures compactness based off a
19 measure of the perimeter, of the boundary.
20 Q The Polsby Popper test in column 4, is that an
21 area-based measure?
22 A Area-based and it's measured zero to 1 with 1
23 being the most compact.
24 Q And the Length-Width test?
25 A That's another perimeter-based.

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1 Q And is it zero being the most compact or least
2 compact? What is the scale here with regard to
3 the Length-Width test?
4 A It's -- it's a length-width -- I don't know. I
5 would assume since it's a length, a
6 perimeter-based, the lower the score, the more
7 compact. But once again, I was not tasked with
8 interpreting these. I was just tasked with
9 running them.
10 Q Have you ever interpreted measures of compactness
11 for other clients?
12 A No, ma'am.
13 Q Did you ever interpret measures of compactness
14 while you were at the RNC in any capacity?
15 A No, ma'am. I produce them, but never interpret
16 them.
17 Q And how many times throughout your career would
18 you say you've run measures of compactness through
19 a GIS system?
20 A Countless.
21 Q Going to the next column, the Population Polygon
22 test, and what is that measure?
23 A It's an area-based, but instead of looking at the
24 area, it draws the circle, and it looks at the
25 population -- the ratio of the population in that

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1 circle to the total population of the district.
2 So it's an area-based, but it uses population to
3 develop the ratio, and it's a zero to 1 measure as
4 well.
5 Q Does the population -- do all these tests listed
6 on this page use the census block file and the
7 boundary file to compute the numbers for these?
8 Is there any other data that's used to come up
9 with these numbers?
10 A No, ma'am, not that I know of, I mean --
11 Q The Population Circle test in the next to last
12 column?
13 A Uh-huh.
14 Q What does that measure?
15 A Measures compactness.
16 Q Is that an area-based measure or perimeter-based?
17 A It's an area-based, but it uses population as
18 well.
19 Q And the last column, the Ehrenburg column, what is
20 that measure?
21 A It -- it's basically a zero to 1 measure as well,
22 and it's just a little different formula than the
23 are rest of them that draws a circle and looks at
24 the ratio of the area within that circle divide by
25 the area outside of the circle.

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1 Q So out of these eight measures of compactness, and
2 you said the Maptitude only has seven measures?
3 A No, Maptitude ran all of these.
4 Q Maptitude, okay. So out of these eight measures,
5 is there any consensus that any one of these is a
6 more accurate or better test than the other one?
7 MR. VOILAND: Object to the form of
8 the question, beyond the scope.
9 Q You can go ahead and answer the question.
10 A No, there's no consensus. There was no discussion
11 as to --
12 Q Up there where it says date?
13 A Yes.
14 Q It says you prepared this report on the 12th of
15 December, 2011?
16 A Yes.
17 Q Is that correct?
18 A That's when we ran them.
19 Q Did you re-run the measures after that point,
20 after the 12th of December?
21 A I could have.
22 Q Do you remember re-running --
23 A I don't remember, but we could have. I did
24 re-run --
25 Q And why would you have re-run these measures after

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1 the 12th of December?
2 A Oh, because we had this mistake in one of the
3 documents that we named, so we ran that one.
4 Q Are you referring to the --
5 A Yes.
6 Q -- December 29th correction to the report?
7 A Right.
8 Q So looking at the December 29th document, if you
9 turn to the second page, please, and the plan name
10 says Act 43 LD?
11 A Uh-huh.
12 Q What does that mean?
13 A That's the Act 43, title of the act, and LD is the
14 legislative district. So this means it was Act 43
15 State House District as opposed to
16 Senate District.
17 Q So with regard to the measures of compactness on
18 this page for Act 43, are these -- these are
19 measuring the compactness of the districts in
20 Act 43?
21 A Correct.
22 Q As opposed to the districts we were just looking
23 at on current, those were from the 2002 --
24 A Correct.
25 Q -- plan?

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1 A Correct.
2 Q And so you said you may have re-run the measures
3 on -- after the December 12th date?
4 A I may have. There would be no reason to run them.
5 The computer -- there's nothing you can change.
6 There's nothing you can introduce to produce a
7 different output. So but --
8 Q Okay. So if you turn to the page with plan name
9 WICD00 NOH20, still on the measures of
10 compactness, it's like four pages after the page
11 we just looked at?
12 A Uh-huh.
13 Q And that's dated December 12th, 2011 as well, and
14 it has --
15 A The title again?
16 Q WICD 00 --
17 A Great, all right.
18 Q So you said Congressional, these are measures of
19 compactness of the current Congressional, the 2002
20 Congressional?
21 A The WIC00 is the current Congressional. It's the
22 Congressional districts through the last decade.
23 Q And the next page is Act 44 NOH20?
24 A Yes.
25 Q And that was run on the 12th of December?

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1 A Right.
2 Q And those are measurements of the districts under
3 Act 44?
4 A Correct.
5 Q Congressional districts under Act 44?
6 A Correct.
7 Q Turning to the next page, please, plan name, it
8 says Wisconsin WISC 2000 current?
9 A Right.
10 Q And that was run on 12/13?
11 A Correct.
12 Q Are the -- what districts are these?
13 A That's the current -- last decade's
14 Senate Districts.
15 Q And the next page is WISC ACT 43 under the plan
16 name?
17 A Correct.
18 Q And that was run on December 13th, 2011?
19 A Right.
20 Q And what are these districts?
21 A These are the districts under Act 43,
22 Senate Districts under Act 43.
23 Q So these are numbers showing measures of
24 compactness for districts under Senate Act 43?
25 A Correct.

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1 Q Can you please turn to the next page? What does
2 this data demonstrate? There's no title to it.
3 It just says area-based measures of DON?
4 A Yeah, title got spread on other documents. It is
5 a comparison of the various measures of
6 compactness comparing the current districts, which
7 are no longer current, but the last decade's
8 districts on each measure of compact --
9 compactness to the districts under Act 43 and 44,
10 and then the third column is the difference
11 between the two.
12 Q So the difference in compactness between the two?
13 A Correct.
14 Q So for example, in District No. 7 where you have
15 under the column C Reock, it has .36, and C is the
16 current under the 2002 Assembly District 7. A
17 Reock is .27, and that is the number for the
18 Assembly District under Act 43, correct?
19 A Correct.
20 Q And then minus .10 under D Reock?
21 A Correct.
22 Q That's the difference?
23 A Correct.
24 Q How -- do you just subtract; is that how you get
25 the difference?

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1 A Yes.
2 MR. VOILAND: Looks like it rounds.
3 A It rounds, correct.
4 Q Okay. Never been very good at math. And it does
5 that for all of the tests?
6 A Yes.
7 Q And this data was calculated first in the GIS --
8 in the Maptitude software?
9 A Correct.
10 Q And then how was this data --
11 A Now, when you say first --
12 Q Yeah, I'm just not sure. It seems that this data
13 came before. This was the raw data, or was this
14 just a different way to calculate compactness and
15 show -- run the numbers?
16 A This is not something I received. This is
17 something we outputted, but I don't know if this
18 was run first as opposed to some of the other
19 reports. It was just kind of ongoing.
20 Q Okay. This report just is a different way to
21 show -- to crunch the numbers essentially?
22 A And to put it side by side for compare it to.
23 Q And did you reach any conclusions with regard to
24 this data?
25 A No.

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1 MR. VOILAND: Object to the form of
2 the question.
3 Q Are there any conclusions or opinions in your
4 report in respect to this compactness data that
5 shows the difference between the 2002 districts
6 and 2011 districts?
7 A No.
8 Q So when you finalized your report and sent it to
9 the client, did they provide feedback on your
10 report to you?
11 A No, ma'am.
12 Q And when did you realize --
13 A With the exception of they noticed that I made a
14 mistake on this one.
15 Q On the measures of compactness for Act 43?
16 A Right. The Senate, not the actual Assembly.
17 Q So moving next to core constituency retention --
18 actually, I'm sorry, I have one more question
19 about compactness measures. Did you modify the
20 Maptitude software in any way when you measured
21 compactness?
22 A No, ma'am.
23 Q When you ran the calculations?
24 A No.
25 Q To measure compactness?

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1 A To the best of my knowledge, you can't modify the
2 way they calculate them.

3 Q So with regard to the compactness calculations,
4 did you run these yourself? Did you import the
5 data yourself and run the calculations in the
6 Maptitude software, or did someone -- did an
7 employee of yours do it?

8 A I did most of them, but employees -- it takes a
9 while to run. So everybody has got it run on
10 their computers. So I did most of them, but yes,
11 I have employees that ran them as well.

12 Q Does it take any specialized training to calculate
13 these measures of compactness?

14 A No. Wait, takes no specialized training in
15 Maptitude to calculate them.

16 Q Does it take any specialized training in any area
17 to import the data and have Maptitude report the
18 calculations?

19 A You have to understand how to import a block
20 assignment file. There's some skill sets that you
21 have to have in order to get it in there. So
22 yeah, I guess you have to have a skill set.

23 Q With regard to being able to import a file from a
24 flash drive into a computer software program?

25 A Yes, you have to have a skill.

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1 Q I'm just wondering if I could import the file
2 myself into a Maptitude software and perform these
3 calculations?

4 MR. VOILAND: Object to the form of
5 the question. Are you taking out all the
6 testimony that you took from him earlier this
7 morning about Maptitude and integ -- all
8 that, or anything on top of that or some kind
9 of special training --

10 MS. ARENDS: I'm asking him in
11 terms of importing the file from the flash
12 drive to Maptitude.

13 Q Is that a simple process? Do you need to train
14 someone to do that?

15 A You need to train someone, but it's not a
16 complicated training, but you do have to train
17 someone.

18 Q So with regard to core constituency retention --
19 actually, I have one more question about the
20 measures of compactness. Because you received the
21 data from -- you received the data from Reinhart,
22 the underlying data, that was used to calculate
23 the measures of compactness, correct?

24 A Yes.

25 Q Are you aware if the files that you received from

82

1 Reinhart in the flash drive and via e-mail were
2 modified or processed in any way in between the
3 time they came from their original source to
4 Reinhart?

5 A To my knowledge, I'm not aware of any manipulation
6 in the files.

7 Q So what does core constituency retention measure?

8 A Yeah, that's just a measure to get a gauge,
9 empirical gauge, on what percent of a district's
10 population was retained in that district. So for
11 example, if you look at the very first one,
12 basically 96.5 of Congressional District 1's
13 population that was in the old district is still
14 in the new district.

15 Q Is core constituency retention an important factor
16 in redistricting work?

17 A It's one of them.

18 Q Why is it an important factor in redistricting?

19 A Well, it's just a measure of, you know, one, the
20 Justice Department looks for this kind of injury
21 to ensure that, you know, that there wasn't
22 wholesale gerrymander, that you kept the core
23 existing districts together. So it's something
24 they look at. And it's something that most
25 organizations when they redistrict are conscious

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1 of.

2 Q What data did you rely on to calculate the core
3 constituency report?

4 A It was the block assignment file and the
5 population data in the block file.

6 Q So to calculate the core constituency retention
7 report, you used the block assignment file?

8 A Correct.

9 Q And the population data?

10 A At the block level.

11 Q At the block level. And where did you get the
12 population data at the block level?

13 A That was either provided by the client, or we just
14 used the census data, which are all in the same.

15 Q You don't remember where it came from?

16 A No.

17 Q The population data?

18 A No.

19 Q And you used the block assignment file you
20 received on the hard drive -- the flash drive,
21 excuse me?

22 A Right.

23 Q And what does the population data at the block
24 level, what is that comprised of?

25 A It's basically over 200 fields of different

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1 population figures, everything from total pop to
2 voting age pop to Hispanic pop. So it's just a
3 total number of the number of people who live in
4 that census block.
5 Q Okay. Can you -- on page, I think it's 3 of your
6 report under core constituency retention, it says
7 the report was generated using block level
8 population data by the U.S. Census Bureau?
9 A Uh-huh.
10 Q So you don't know whether that came from a client
11 or from your own resources?
12 A I don't. I don't.
13 Q And if you could turn, please, to -- again, these
14 aren't numbered, but I think it's the first page
15 after your file, it says *Core Constituency Report*?
16 A Got it.
17 Q Can you please read the title of this for me?
18 A *Core Constituency Report, Congressional District*
19 *Act 44.*
20 Q What do the columns say, please?
21 A Population, white, black, Hispanic.
22 Q And you said there were over 200 fields, and by
23 fields you mean?
24 A Different categorizations of race, like multiple,
25 people who consider themselves more than three

85

1 races. Yeah, there's different --
2 Q So out of the 200 fields, the four that you just
3 listed, population white, black, and Hispanic,
4 were the only ones that were requested by the
5 client?
6 A They actually were not requested. That's just the
7 three that most often people look at. It's the
8 three that has the biggest percentage of a
9 district, and you only have so much room to put
10 fields across the top. So I just picked the three
11 biggest ones. But I don't recall any particular
12 fields being requested.
13 Q And so what exactly does this table measure? I
14 see here act plan is the first row, Congressional
15 District No. 1, and then you have totals with
16 numbers, and then old District 1, old District 2,
17 and old District 5 underneath the totals; what
18 does that tell me?
19 A That's saying basically roughly 710,000 people in
20 Congressional District 1 as shown in Act 44.
21 686,159 were from the old Congressional
22 District 1.
23 Q And under that old District 2?
24 A Correct. It just says that more than 1,300 of the
25 total population that's in the new Congressional

86

1 District 1 came from the old Congressional
2 District 2.
3 Q So that's how many people were moved from the old
4 District 2 into new District 1?
5 A From old 2 into new District 1.
6 Q And underneath that old District 5 has 23,000 --
7 A 23,000 people were moved from the old District 5
8 into the new Congressional District 1.
9 Q And then it breaks it down into -- it goes from
10 the total population to the percentage of white
11 for each --
12 A Correct.
13 Q -- district, percentage of black population for
14 each district and Hispanic?
15 A Correct.
16 Q Can you please turn to page 2 of 16 of the core
17 constituencies report?
18 A Okay.
19 Q Can you read the title please?
20 A *Core Constituencies Report, House District,*
21 *Act 43.*
22 Q So you ran the same types of numbers that you ran
23 for the Congressional District?
24 A Correct.
25 Q These were for the Assembly District?

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1 A Correct.
2 Q And on page 2 of 16, it says Act 43, House
3 District No. 8 is in bold?
4 A Correct.
5 Q And then it says old District 8, and it has under
6 population, 31,656. And so that is, according to
7 what you just told me, that's how many people
8 stayed in District 8 --
9 A Correct.
10 Q -- who were previously in District 8?
11 A Correct.
12 Q And so on here, there's no number of how many
13 people used to be in District 8 to begin with; is
14 there a total for the old districts?
15 A Not in that particular column, but -- or not in
16 that particular row. But if you go down to
17 District 9, you'll see where there's some old
18 district date. But to answer your question, no.
19 Q So under House District 9, it looks like old
20 District 8 is 22,960, so that's how many people
21 were moved from District 8 into District 9?
22 A Correct.
23 Q So if you go through and you find all the rows
24 that say old District 8 and add them up, that
25 would be the number of how people who used to be

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1 in old District 8?

2 A Yes.

3 Q Thank you. I was confused about that. So under

4 House District 8, you have old District 8, 31,656

5 under total population. Old District 9 says

6 22,862 under total population?

7 A Correct.

8 Q And then old District 19, 2,728 under total

9 population?

10 A Right.

11 Q And those are all the people that were moved or

12 now comprise the new Assembly District 8 under

13 Act 43?

14 MR. VOILAND: Object to the form of

15 the question. You said -- could you read the

16 question back, please.

17 (Question read)

18 MR. VOILAND: Object to the form of

19 the question.

20 Q So the number of 57,246 represent the number of

21 people in the new District 8 under Act 43?

22 A Correct.

23 Q And if you break that down by the different

24 districts, can you just read off the lines, the

25 rows for me? So old District 8?

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1 A 31,656.

2 Q So that's how many stayed in District 8?

3 A Correct.

4 Q And old District 9?

5 A 22,862.

6 Q That's how many moved from District 9 to

7 District 8?

8 A Correct.

9 Q And old District 19?

10 A 2,728.

11 Q And that's how many people moved from District 19

12 into District 8?

13 MR. VOILAND: Object to the form of

14 the question.

15 Q Can you just read the same thing for House

16 District No. 9, please, under total? I've got

17 57,233?

18 A Correct.

19 Q And so how many came from old District 8?

20 MR. VOILAND: Object to the form of

21 the question.

22 Q How many -- I mean, I'm just reading the chart

23 here.

24 MR. VOILAND: Do you have a

25 question?

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1 Q How many of the people came from old District 8?

2 MR. VOILAND: When you say

3 people --

4 Q Are they voting age population? Are they --

5 A This is total pop as calculated by the census.

6 Q So you don't know what the raw data is comprised

7 of?

8 A It's total pop.

9 MR. VOILAND: Object to the form of

10 the question. I'm just objecting to your

11 question. It seems that he doesn't know

12 anything. The way that you're asking the

13 question, I'm not sure what you're asking.

14 MS. ARENDS: I'm just asking him to

15 read the report and explain to me what it

16 means.

17 MR. VOILAND: What do you want him

18 to explain to you? You're just asking him to

19 read the number that's already there.

20 MS. ARENDS: I was confirming that

21 my -- I'm confirming that my interpretation

22 of the report is correct. I don't want to be

23 incorrect in how I'm interpreting the

24 numbers.

25 MR. VOILAND: I'm not understanding

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1 your question. What are you asking?

2 Q Are you understanding the question, or do you

3 understand what I'm asking you?

4 MR. VOILAND: Can I just talk to

5 him for a second?

6 MS. ARENDS: Sure.

7 THE VIDEOGRAPHER: The time is

8 1:53. We are going off the record.

9 (Recess taken)

10 THE VIDEOGRAPHER: The time is

11 11:36. We are on the record.

12 Q So Mr. Diez, before we broke, we were talking

13 about the core constituencies report, and the

14 House Districts' measurements or calculations that

15 were performed for Act 43. Specifically, we were

16 talking about House District No. 8 under Act 43

17 and House District No. 9 under Act 43. With

18 regard to the old -- the population numbers

19 under old District 8, old District 9 and old

20 District 19, under Act 43 House District No. 8,

21 those numbers were provided to you in the form of

22 data that was received from Reinhart by you?

23 A The census block assignment file and the block

24 file, yes, was received by them.

25 Q And so did you use the Maptitude software program

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1 to calculate the core constituencies report?
2 A I did this in Access.
3 Q What is Access?
4 A A Microsoft product, a database product with a
5 report generator.
6 Q Did you modify that software in any way to run
7 this report?
8 A Which software?
9 Q The Microsoft Access.
10 A Yes, you have to. It's a -- yes.
11 Q How did you modify it, Microsoft Access?
12 A Modify may be a bad word then because you just
13 start off with an empty database and you build
14 the -- you build the reports. I didn't take the
15 program and modify it. I used the program to
16 design the report.
17 Q And how did you design the software to generate
18 the core constituencies report?
19 A Repeat the question again.
20 Q How did you design the software or build the
21 software to generate the core constituencies
22 report? Did you write code for it or modify it in
23 some way. I know you didn't modify it. You
24 designed it.
25 A Right. We wrote a query.

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1 Q Okay.
2 A And then generated a report by telling the report
3 which field you wanted displayed.
4 Q Okay. And you said you picked the population
5 white, black, and Hispanic. You weren't told
6 to --
7 A I was not told to --
8 Q -- import those into the core constituencies
9 report?
10 A Yeah.
11 Q Did you calculate a core constituency retention
12 for any configuration of Assembly District 8 other
13 than the configuration that's shown here, old
14 Districts 8, 9 and 19? Did you run a report for
15 any other configuration of Assembly Districts
16 other than what is shown here on this report?
17 A No, just Act 43.
18 Q Just Act 43?
19 A Correct.
20 Q And there was only that one -- the Act 43
21 implemented, Act 43 that was provided to you, the
22 numbers from one -- the final version of Act 43?
23 A Correct.
24 Q Did you run this report after you generated -- did
25 you run this report multiple times, or did you

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1 only run this report, the core constituencies
2 report, once?
3 A I ran it multiple times because you build it piece
4 by piece, but --
5 MR. VOILAND: Object to the form of
6 the question. Could you maybe tell him what
7 you mean by ran it?
8 Q Well, I'm not sure exactly how you build it and
9 how it's run. So could we break that down in some
10 detail?
11 A Yes.
12 Q So when you build this program, the software --
13 MR. VOILAND: Object to the form of
14 the question. He hasn't said he built any
15 software.
16 MS. ARENDS: He said he built the
17 program.
18 Q Could you explain what you mean by built?
19 A I built the report in the database.
20 Q Okay.
21 A It already comes provided with a program in the
22 software package. It's a Microsoft product. It's
23 like you type the document. You didn't write the
24 program.
25 MR. VOILAND: Access is like Excel.

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1 THE WITNESS: Yes.
2 MR. VOILAND: That's all it is.
3 MS. ARENDS: Thank you. I'm asking
4 the questions of the witness.
5 MR. VOILAND: But you asked him did
6 he build the software, and he had never said
7 he built the software.
8 MS. ARENDS: Well, I'm confused
9 because his terminology is not clear.
10 MR. VOILAND: Well, he did. He
11 said he used Microsoft Access and you're
12 not -- maybe your confusion is that you don't
13 understand that Microsoft Access is software.
14 MS. ARENDS: Thank you. I'm going
15 to direct my questioning towards the witness.
16 Q So Mr. Diez, you inserted queries regarding the
17 House Districts under Act 43?
18 MR. VOILAND: Object to the form of
19 the question, no foundation.
20 Q Is that correct?
21 MR. VOILAND: There's no
22 foundation.
23 A I'm not sure I'm getting the question, to be
24 honest.
25 Q With regard to -- you said you wrote a query for

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1 the Microsoft Access. What is a query?

2 A A query is a structured query language which is

3 used in relational databases, and it, you know,

4 goes out to a database where it may have multiple

5 fields and selects the ones you want and put in

6 the report, and it also does the calculations. If

7 you want to add them, you want to subtract them,

8 you want to sum them, group them, there's

9 different commands. So essentially, a query is

10 just that, it goes and asks a question of the

11 database and reports it back out.

12 Q And who decided to -- who decided which queries

13 you would input into the Microsoft Access to

14 generate the core constituencies report?

15 A I decided.

16 Q Is there a standard set of queries that you input

17 for Microsoft Access to generate a core

18 constituencies report?

19 A No.

20 THE VIDEOGRAPHER: The time is

21 11:43. We are going off the record,

22 concluding Disk No. 1 in the deposition of

23 Mr. John Diez.

24 (Recess taken)

25 THE VIDEOGRAPHER: The time is

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1 11:51. We are on the record. This marks the

2 beginning of Disk No. 2 in the deposition of

3 Mr. John Diez.

4 Q Mr. Diez, before we broke, we were discussing the

5 core constituencies report that you ran for your

6 client with regard to the litigation at issue. In

7 looking at the total population column, and we're,

8 again, we're on page 2 of 16, which is

9 House Districts under Act 43 or Assembly Districts

10 under Act 43. Does that population column, is

11 that total population?

12 A That is total population.

13 Q And is that population, is that total population

14 figure, does that include voting age population?

15 Is that just voting age population? What does

16 that population number represent?

17 A That is total population number is the total

18 population as calculated by the U.S. Census.

19 Q And you said you used a census block file that you

20 received from the client?

21 A Right.

22 Q Is there a margin of error for every census block?

23 A You mean from the standpoint of how the census

24 bureau counts the people? I mean, are you asking

25 me is there a margin of error? Are they 100

98

1 percent right when they count and say that there's

2 19 people on a census block; is that what you

3 mean?

4 Q Yes.

5 A Yes, there is a margin of error for calculating --

6 or for counting the census data.

7 Q Did you perform that calculation with respect to

8 the census block file that was provided to you?

9 A You can't correct it because you don't really know

10 what it is.

11 Q And that's not included in the census block file?

12 MR. VOILAND: Are you asking if

13 the census --

14 MS. ARENDS: I'm asking him whether

15 or not the margin of error is included in

16 that census block file -- the margin of error

17 calculation is included in the census block

18 file.

19 MR. VOILAND: What margin of error

20 calculation? There's no foundation for your

21 question.

22 A I don't know if the census bureau includes it.

23 Q Okay. Thank you. So with regard to the files

24 that you used in calculating the core constituency

25 report, you said you received the block assignment

99

1 file from the client?

2 A Correct.

3 Q And the population data at the block level?

4 A Correct.

5 Q And you don't know who that file was provided --

6 whether you got that from the client or whether

7 you got that yourself?

8 A Correct. I mean, I know I received it from the

9 client, but I may have used existing census data

10 that I had.

11 Q And where would you have gotten that existing

12 census data?

13 A Census bureau.

14 Q Would you go online to a website to get that?

15 A Get it online at the website or FTP.

16 Q F --

17 A File transfer protocol.

18 Q Okay. Thank you. Did you reach any conclusions

19 about core constituency retention in your report?

20 A No.

21 MR. VOILAND: Object to the form of

22 the question.

23 Q Are there any conclusions in your report dated

24 December 14th, 2011 that you provided to Reinhart

25 with regard to core constituency retention?

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1 MR. VOILAND: Object to the form of
2 the question. When you say *conclusions*, do
3 you mean opinions, or do you mean conclusions
4 that there are 57,246 people?
5 Q I'm asking, Mr. Diez, whether or not you reached
6 any conclusions regarding core constituency
7 retention in your report dated December 14th,
8 2011?
9 A No.
10 Q So Mr. Diez, you ran the numbers regarding core
11 constituency retention in the Microsoft Access
12 program?
13 A Yes.
14 Q You didn't provide any written conclusions to the
15 client regarding core constituency retention?
16 A Correct.
17 Q Did you provide any verbal conclusions to the
18 client regarding core constituency retention?
19 A No.
20 Q Again, with regard to the calculation of core
21 constituency retention, is that a calculation that
22 you yourself performed?
23 A Yes.
24 Q Did any of your employees perform it?
25 A No.

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1 Q Do you need any special training to perform core
2 constituency retention calculations or generate
3 core constituency reports?
4 A Yes.
5 Q And what kind of specialized training do you need?
6 A Database training, relational databases, report
7 generating. If you're going to develop the report
8 in Access, you've got to at least have some skill
9 sets in Microsoft Access.
10 Q And Microsoft Access is similar to Excel in
11 Microsoft, a spreadsheet essentially?
12 A Microsoft Access is a relational database.
13 Q So how is that different from an Excel
14 spreadsheet?
15 A In many different ways. A spreadsheet is just as
16 a spreadsheet. A relational database allows you
17 to link various types of data in a database.
18 Q Okay, and link it --
19 A There's other functionalities that one does that
20 the other doesn't. The size of the files you can
21 manipulate.
22 Q I've never used Microsoft Access before; that's
23 why I ask.
24 A Uh-huh.
25 Q Is it something that you purchase separate from a

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1 Microsoft Word package?
2 A It comes with their Office Professional.
3 Q Have you reached conclusions, written conclusions,
4 for other clients with regard to core constituency
5 reports that you've generated before?
6 A Not that I recall.
7 Q Could you please turn to page 3 of the
8 December 14th report? Are there any other ways to
9 calculate core constituency retention? Any other
10 software programs that calculate core constituency
11 retention?
12 A Yes, there's different ways to -- there's
13 different programs that do it. You could do it
14 with Crystal Reports, FoxPro. There's just a host
15 of different databases that generate reports that
16 you could have done it in.
17 Q What was the first one you mentioned before
18 FoxPro?
19 A FoxPro, Crystal Reports.
20 Q And why do you use Microsoft Access to calculate
21 core constituency reports?
22 A It's the one I'm most familiar with.
23 Q On page 3 of the December 14th report with regard
24 to pairing and open seats, under that header, you
25 mentioned earlier the incumbent geographic layer?

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1 A Uh-huh.
2 Q What exactly is the incumbent geographic layer?
3 A It is a geographic file, meaning you open it up in
4 your GIS software package, of the incumbent's --
5 of the incumbent's address with a latitude and
6 longitude in the file. So you can basically open
7 up, in simplest terms, a dot file, with a bunch of
8 dots showing all the incumbents and overlay that.
9 Q And what do you overlay that?
10 A With a plan, with House District -- or Act 43
11 plan.
12 Q And so in addition to the data that we already,
13 the files that we already talked about that the
14 client gave you, did they give you a file
15 containing Act 43 and Act 44?
16 A For the incumbents?
17 Q Yes.
18 A No, they just gave us the incumbents as of -- I'm
19 not sure of what date, but it was just one file of
20 the incumbents in the Senate and the State
21 legislature.
22 Q In the Assembly Districts and Senate Districts.
23 Did they provide it to you in
24 Congressional Districts?
25 A No.

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1 Q And so you said this incumbent geographic layer
2 was sent to you by e-mail?
3 A Correct.
4 Q And it was from --
5 A Either Mr. Kelly or Adam. I don't think I've ever
6 received an e-mail from Adam. I just think he was
7 the one who had to go track it down.
8 Q And the e-mail containing that file is included in
9 the flash drive?
10 A Should be, yes.
11 Q Do you have a computer that you use exclusively
12 for work purposes?
13 A No.
14 Q So you use a computer for both work and personal?
15 A Yes.
16 Q Do you have a laptop at work or a desktop at work?
17 A A desktop.
18 Q A desktop. Do you have a laptop for work?
19 A I have five or six laptops.
20 Q Okay. That are solely yours?
21 A The company's.
22 Q The company's?
23 A Yeah.
24 Q That you use, five or six that you use?
25 A I use, they use, everybody uses.

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1 Q And then do you have a computer at home?
2 A Yes, several.
3 Q How many?
4 A Three.
5 Q And do you use those for work purposes as well?
6 A Sometimes, yes.
7 Q For this client, the work that you did for this
8 litigation, did you use one computer or numerous
9 computers?
10 A Numerous computers.
11 Q Is there anything -- would you have saved anything
12 on hard drives on those numerous computers?
13 A Yes, sure I would have.
14 Q Did you search all of those computers and all of
15 those hard drives for documents relating to this?
16 A There would be no documents on those computers.
17 Q Even though you just said things were saved on the
18 hard drives?
19 A But not documents. Sometimes things run faster
20 when you put it on a C drive. So you know,
21 obviously it will copy to the C drive to run it,
22 to run these reports.
23 Q But we have copies of everything on the flash
24 drive that would be responsive to this document
25 request?

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1 A Yes. Can you repeat the question again, I'm
2 sorry?
3 Q What I'm trying to get at is did you search all of
4 the computers that you may have used in connection
5 with this litigation for documents that would be
6 responsive to the document request?
7 A The answer would be no then. You see like, I
8 think, I can't open this geographic file and do
9 anything with it and somebody else in my office
10 open it. So sometimes you just take it and move
11 it to your C drive just so that you can work with
12 it. So if somebody moved something, I didn't go
13 to those computers and get it.
14 Q Could it have been modified while it was residing
15 in another computer and maybe there's a different
16 variation on --
17 A It shouldn't have. I mean, nobody was told to go
18 modify anything.
19 Q Okay. I'm just trying to find out if you
20 performed a full search of --
21 A And you would have to tell me.
22 Q -- of your computers, and you know, hard drives
23 to look for documents that could be responsive to
24 the document request in Exhibit A. And if you
25 don't think you have, then we would ask that you

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1 go and do some further searching to ensure that we
2 have all the documents that are responsive to the
3 document request?
4 A Okay. So somebody copied something from the F
5 drive to the C drive just so they can have it
6 open, is that pertinent, I mean, to your request?
7 Q I mean, if they copied it, if it was modified in
8 some way --
9 A Not modified, just --
10 Q So it's not a different version of what you've
11 produced?
12 A No, it's not.
13 Q If it's not a different version, if it hasn't been
14 modified --
15 A Well, then I have.
16 Q But we would need you to ensure that there has
17 been no modifications or --
18 MR. VOILAND: Are you talking about
19 running a file on something or actually
20 having a saved work product on another
21 computer that he didn't produce, or do you
22 just mean running a program?
23 MS. ARENDS: I'm asking him to
24 search his -- to ensure that, you know, he
25 has searched all the computers that you've

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1 used that you maybe saved a file on a hard
2 drive in one of these six computers, laptops
3 that you use at work, that's somehow
4 responsive to the document request that you
5 didn't know you needed to look at these.
6 MR. VOILAND: I think your question
7 is confusing. Are you asking did he open his
8 e-mail on his laptop and open --
9 Q Mr. Diez, do you understand the question I'm
10 asking regarding whether or not documents were
11 saved on your hard drive on these five or six
12 different laptops at work that are different or
13 have been modified in some way?
14 A Nothing has been modified or different.
15 Q I'm just trying to ensure that we have all the
16 documents in your possession and custody.
17 A When you say document, when I think of documents,
18 this is a document. I'm thinking of geographic
19 files, that incumbent layer, none of that has been
20 modified, wouldn't save to other computers or
21 anything.
22 Q Okay. So it may exist on another hard drive?
23 A Right.
24 Q It may have been opened and saved to another hard
25 drive, but it hasn't been modified or it's not a

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1 different variation of the report that --
2 A Correct.
3 Q Okay. Thank you. So with regard to the Assembly
4 pairing and open seats that's on page 3 of the
5 December 14th report, it lists five Republican and
6 democratic pairings. It lists three Republican
7 pairings, and it lists three Democratic --
8 Democrat pairings. Who provided you this
9 information?
10 A It was, once again, we used the incumbent
11 geographic layer. That's who provided me with the
12 data. And I had an employee visually inspect each
13 district to see if somebody was paired or drawn
14 out of their seat or their district.
15 Q So you don't use a computer program to do this?
16 A We do.
17 Q So can you please explain to me how you came to
18 these conclusions, I guess, with regard to
19 pairings?
20 A Yes. Think of GIS as a bunch of transparencies,
21 so you know, overlays. So you have the districts,
22 and then you can open up the incumbent dot file,
23 so basically you got boundaries and you got little
24 dots everywhere. And you know this is
25 District 15, and you also know the incumbent that

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1 lives in there is in District 15, so he was not
2 paired. But then you can go to another district,
3 and there may be, for example, 13 and 14, are in
4 the same boundary under Act 43; therefore, they
5 were paired. So that's -- explain.
6 Q So you overlay the incumbent geographic layer to
7 the maps under Act 43 and Act 44?
8 A Correct.
9 Q And where did you get the maps for Act 43 and
10 Act 44?
11 A From the client.
12 Q From the client?
13 A Yeah. We created it using the block assignment
14 file.
15 Q So you got the maps or you created the maps for
16 Act 43 and 44? Did you create the maps?
17 A We created them using the block assignment file.
18 Q And when did you run this Assembly pairing and
19 open seats --
20 A I don't know off the top of my head --
21 Q -- report?
22 A -- what day. It also took several days to go
23 through each district.
24 Q So you -- after you or an employee overlaid the
25 incumbent geographic layer onto the maps for

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1 Acts 43 and 44, I guess I'm just confused. The
2 computer overlays the maps; is that correct?
3 A Correct.
4 Q And it's the GIS system that overlays the maps?
5 A Correct.
6 Q And then the -- you said your employee visually
7 inspects --
8 A Each one.
9 Q -- the map on top of the Act 43 and Act 44 maps
10 to determine?
11 A The incumbents --
12 Q Where the incumbents --
13 A If they're still in their district or they've been
14 removed or paired.
15 Q Did you use Maptitude or Access or any of the
16 programs we've talked about to perform this?
17 A We used Maptitude.
18 Q You used Maptitude, okay. Are you familiar with
19 Autobound?
20 A I know it exists, but I've never -- never worked
21 for a company that used it, so I'm not familiar
22 with it.
23 Q Your company does not use Autobound?
24 A Correct.
25 Q If you could please turn the page of the 12/14

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1 report, and go down the page about halfway,
 2 there's a paragraph that says *While the incumbents*
 3 *for Districts 47 and 80 are not paired into*
 4 *another district, they were indirectly affected by*
 5 *shifts in redistricting.* Can you explain to me
 6 what indirectly affected by shifts in
 7 redistricting means?
 8 A They were not paired into another district, but
 9 it's quite possible, and I would have to go back
 10 and look at the time, that maybe their district
 11 demographically changed so much or their core
 12 constituency is not what it used to be that they
 13 were affected by redistricting.
 14 Q And how were they affected?
 15 A Their district changed.
 16 Q Their district changed?
 17 A Right.
 18 Q And so the underlying data that you used to
 19 calculate or measure these pairings and open
 20 seats, that data has been provided on the flash
 21 drive?
 22 A Yes.
 23 Q Because I see it's not in the report, the
 24 underlying data. You couldn't print it out?
 25 A No.

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1 Q Okay.
 2 A But it's -- I mean, it's in this narrative here.
 3 Q Was there any other data that you used to measure
 4 pairings and open seats?
 5 A No.
 6 Q So you performed this measurement for both the
 7 Assembly and the Senate?
 8 A Right.
 9 Q And if you turn the page to, I believe it's page 5
 10 of your December 14th report, there's a list of
 11 the accompanying tables and a score constituency
 12 report, and then at the bottom of the page, it
 13 says political data. What does the political data
 14 refer to in your report?
 15 A That should have been the -- go to the back, the
 16 tables where it has got the governor's
 17 presidential -- 2010 governor's race, 2008
 18 presidential, and 2006 governor, that's just the
 19 political makeup of the pre and post districts,
 20 which is something the client asked for.
 21 Q Okay. So under the column 2010 Governor, under
 22 District 1, the row that says District 1, is that
 23 Assembly District 1? This says it is the
 24 Assembly District political report.
 25 A Yes. That is the political report for Assembly

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1 District 1 as per Act 43.
 2 Q And under the column heading then, that's
 3 democratic, correct?
 4 A Correct.
 5 Q And then under the column heading GOP, that's
 6 Republican?
 7 A Correct.
 8 Q Under the column heading Democrat, under Assembly
 9 District 1, it says current, and it has a
 10 percentage, 45.3 percent. What does that
 11 percentage measure?
 12 A District 1 -- for the Assembly District 1 for the
 13 previous decade. If you look at the Democrat
 14 candidate for governor in 2010, his percentage in
 15 that district was 45.3.
 16 Q So the candidate for governor, the democratic
 17 candidate for governor?
 18 A Correct.
 19 Q So that would be Tom Barrett?
 20 A They sent me the data. I calculated the candidate
 21 for governor.
 22 Q And then the next column says proposed, it says
 23 45.1 percent?
 24 A Right.
 25 Q What does proposed mean?

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1 A That's the proposed Act 43.
 2 Q And so what does 45.1 percent measure?
 3 A The District's political configuration under
 4 Act 43, the 2010 candidate for governor would have
 5 received, if the lines would have been in this
 6 configuration, received 45.1 percent.
 7 Q So if the lines under the map for Act 43 had been
 8 drawn in 2010 or had been used in 2010 governor's
 9 race, then the democratic candidate for governor
 10 would have received 45.1 percent of the vote under
 11 the Act 43 map; is that what that number is
 12 saying?
 13 A That says that in Act 43, if you look at Act 43's
 14 configuration for District 1, the governor --
 15 democratic governor in 2010 received 45.1 percent
 16 of the vote.
 17 Q Would have received?
 18 A Yeah, in the geography composing.
 19 Q And then the different column there is just the
 20 difference between the two?
 21 A Yes.
 22 Q So under the -- for the 2010 governor's race, the
 23 democratic candidate for governor in Assembly
 24 District 1 under Act 43 would have received .3
 25 percent; I'm assuming that's rounded?

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1 A Yes.
2 Q And then you performed these calculations for the
3 2008 presidential race?
4 A Right.
5 Q As well as for the 2006 governor's race?
6 A Correct.
7 Q And what data did you use to perform these
8 calculations?
9 A The statistical political data provided by the
10 State.
11 Q And what political data was that comprised of?
12 A It was the political data that was included in the
13 geographic files that they sent us. In addition
14 to just census numbers, there were political
15 results.
16 Q And did you use a software program to calculate
17 these numbers?
18 A Microsoft Access.
19 Q So that would -- because you used
20 Microsoft Access, you had to write queries?
21 A Correct.
22 Q For the political report?
23 A Correct.
24 Q And the client asked you to write these?
25 A Not for those particular reports. They just

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1 needed some gauge of political dynamics, so he
2 didn't -- no, the client did not specify which
3 races.
4 Q So what exactly did the client ask you to do with
5 regard to the political report?
6 A Just analyze the political numbers for the
7 proposed and current plan.
8 Q So why didn't you go any further back than the
9 2006 governor's race in terms of there was a
10 presidential election in 2004?
11 A It's a function of space. You can do it and
12 had -- had done it. There was -- no one told me
13 not to or not to. It was just a decision I made.
14 If there's anything in particular, I'm sure
15 they'll come back and ask.
16 Q And did you have any conversations with the client
17 about conclusions that you reached or opinions
18 that you had about the political report?
19 A I did not.
20 Q And there's nothing in the report describing the
21 information in the political data report; is that
22 correct? There's nothing in your written report
23 other than the measurements, the calculations?
24 A Yeah, there's just the reports.
25 Q I just wanted to make sure we had everything.

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1 A Yes.
2 Q And with regard to the geographic files that
3 included this political data, were those in the
4 census block file or the boundary file or the 2010
5 census TIGER file or the block assignment file?
6 Where was this political --
7 A They're in the TIGER block file.
8 Q And what else is in the TIGER -- census TIGER
9 files? Is that the same thing as what you just
10 said, the TIGER block file?
11 A Yes, correct.
12 Q Okay. So there's political data in there?
13 There's geographic information?
14 A Yes.
15 Q And what else --
16 A Population demographics.
17 Q Anything else?
18 A That's it. In the one I received from the client,
19 not enough information in a block file.
20 Q I'm sorry, I didn't hear you.
21 A From the file that I received from the client,
22 that's all they had.
23 Q With regard to the 2010 census TIGER file, does
24 the client -- does the client decide what to put
25 in that file to populate that file, or is that

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1 something they --
2 A Yeah, somebody has to make that decision. The
3 client doesn't make the decision. The census
4 bureau decides what race variables we're going to
5 capture. Census bureau decides what geographic
6 variables we're going to capture. We townships in
7 the block file. But yeah, the client can decide
8 what political data and what races he wants, and
9 you know, things of that nature.
10 Q And that TIGER file came to you on the flash
11 drive?
12 A Yes.
13 Q So when you spoke to the client at the beginning
14 of your work in this litigation matter, they
15 requested from you at the beginning to run this
16 political data report?
17 A Yes.
18 Q Mr. Diez, I'm going to show you another document.
19 (Exhibit No. 84 marked for
20 identification)
21 Q I believe this one will be Exhibit 84. What's the
22 title of that document?
23 A *Deferred Voting Study*.
24 Q And what's the date of that document?
25 A January 11th.

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1 Q And did you prepare this document?
2 A Yes.
3 Q And who is this document to?
4 A The client.
5 Q The client's name is Daniel Kelly, Reinhart,
6 Attorneys at Law?
7 A Yes.
8 Q So did the client ask you to prepare this at the
9 beginning of your work in the litigation matter?
10 A There was some discussion at the beginning.
11 Q Why did you wait to perform the study until
12 January 11th?
13 A They never did come back and say we definitely
14 need it early on in the project.
15 Q Okay. So who followed up with you from the client
16 to tell you that they needed the deferred voting
17 study?
18 A It was Patrick.
19 Q Patrick Hodan?
20 A Yes.
21 Q And did he follow up with you at the end of
22 December, or approximately when did he follow up
23 with you regarding the deferred voting study?
24 A I would have to say it's more the beginning of
25 January, end of December, yes.

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1 (Exhibit No. 85 marked for
2 identification)
3 MS. ARENDS: If you don't mind
4 sharing off of him. It's the expert report.
5 Q What is this document?
6 MR. VOILAND: One second. I'm
7 looking at it since there wasn't a copy.
8 Q Mr. Diez, what is this document marked?
9 A Rebuttal report of Ronald Keith Gaddie, Ph.D.
10 Q I'm sorry, that's actually 85. Going back to the
11 deferred voting study, what is this study? Why
12 did you undertake this study?
13 A They requested it is why I ultimately did it. But
14 outside of that, I really don't know where it fits
15 in into the whole process. They just asked for
16 it, so I did it.
17 Q And what exactly did the client ask you to study?
18 A They wanted to look at the deferred voting rates
19 and compare it to other states. And so we used
20 these six states or five states in addition to
21 Wisconsin.
22 Q And which five states did you look at in addition
23 to Wisconsin?
24 A We looked at California, Missouri, Oregon,
25 Oklahoma, Ohio, and Wisconsin.

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1 Q And why did you look at California, Missouri,
2 Ohio, Oklahoma, and Oregon and compare that to
3 Wisconsin?
4 A That was states we had data readily available.
5 They completed the redistricting process, and they
6 do have stagger terms in the Senate. So they met
7 the criteria.
8 Q And that was criteria that you came up with or
9 that your client came up with?
10 A That was criteria I came up with. They were
11 states that you can do a deferred voting analysis
12 on.
13 Q And why was it necessary to perform this analysis?
14 A You would have to ask the client.
15 Q Well, was there something that came to light after
16 December 14th that caused you to prepare this
17 study for the client?
18 A Nothing other than the client asked for it.
19 Q Was -- this study has never been published or --
20 it's just a --
21 A Right.
22 MR. VOILAND: It's just a?
23 MS. ARENDS: Excuse me while I
24 finish the question. Thank you.
25 Q It's an analysis of the six states?

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1 A Correct.
2 MR. VOILAND: Object to the form of
3 the question.
4 Q What computer program did you use to calculate the
5 numbers on page 2, the deferred voting and
6 State Senate elections in 2011 redistricting?
7 There are several percentages that you calculated.
8 Did you use a computer program to calculate these
9 percentages?
10 A Microsoft Access.
11 Q So you wrote queries for Microsoft Access to
12 calculate these different percentages?
13 A Correct.
14 Q So looking at the row that has California as the
15 state, if you move to the column that says
16 percentage deferred, and then you look at the next
17 column, it says odd to even?
18 A Right.
19 Q What does that mean, odd to even?
20 A That for each one of those states, that -- that is
21 the total population of people who prior to the
22 plan, the 2010 plan, were in an odd district, but
23 then as a result of redistricting, were moved to
24 an even district.
25 Q Okay. So there's odd to even, a row that says

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1 even to odd?

2 A Correct.

3 Q No change, and then the total population?

4 A Correct.

5 Q And where did you get the underlying data for this

6 deferred voting study?

7 A Census data at the block level, and it's outlined

8 in the report.

9 Q Did you use any other data for this report?

10 A No, just census data.

11 Q Do you know if the other states, Oregon, Ohio,

12 Oklahoma, Missouri, or California have similar

13 redistricting criteria to Wisconsin's

14 redistricting criteria?

15 MR. VOILAND: Object to the form of

16 the question. There's no foundation.

17 Q You can go ahead and answer it.

18 A No, I don't know.

19 Q Are you aware that California has a nonpartisan

20 citizens redistricting commission?

21 A I am.

22 Q Do they use the same redistricting criteria as in

23 Wisconsin?

24 MR. VOILAND: Object to the form of

25 the question. There's no foundation in

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1 evidence to define what the redistricting

2 criteria is in Wisconsin .

3 Q Do they have the same laws regarding redistrict --

4 redistricting, excuse me, that they draw their

5 maps by as Wisconsin does?

6 MR. VOILAND: Object to the form of

7 the question. There's no foundation. It's

8 beyond the scope of this witness's testimony.

9 Q You can go ahead and answer.

10 A No, I don't know.

11 Q You don't know. In looking at the percentage

12 deferred row -- column, excuse me, for Oklahoma,

13 Missouri, and California, looking at that

14 percentage, 8.13 percent for Oklahoma, 11.27

15 percent for Missouri, and 10.46 percent in

16 California?

17 A Uh-huh.

18 Q And then if you could please turn to the rebuttal

19 report for Dr. Gaddie, and at the last page,

20 Table 6?

21 A What page am I looking for, I'm sorry?

22 Q It's the last page. It's not numbered. It's

23 Table 6 on the last page. So Table 6 of

24 Dr. Gaddie's report, what does the bottom line

25 say? It starts with source.

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1 A It says Data compiled by John Diez with Magellan

2 Strategies BR, January 11th, 2012.

3 Q Looking at Oklahoma's percentage delayed under

4 Table 6 of Dr. Gaddie's report?

5 A What am I looking at again?

6 Q The percentage, the column marked percentage

7 delayed under Dr. Gaddie's report for Oklahoma?

8 A Uh-huh.

9 Q What is the percentage delayed in Table 6 for

10 Dr. Gaddie's report?

11 A For Oklahoma, it's 7.98.

12 Q Okay. Is this the same table, are these the same

13 numbers that you calculated in your report?

14 A There was a discrepancy, and it was fixed and sent

15 back to them. These are the right numbers. The

16 percentages are wrong. So all I did was change

17 the percentages, but it looks like somebody

18 released something without adding the new updated.

19 Q Which ones are, the right numbers?

20 A The ones in this column.

21 Q In Dr. Gaddie's report?

22 A Yes.

23 Q The table in Dr. Gaddie's report?

24 A Well, here, if you give me a calculator, I can

25 figure it out. It's just basically odd, even

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1 divided by total pop, and it was just a function

2 of the math. The formula of the cells were wrong.

3 Q So do you have an updated version of your

4 January 11th report that is not --

5 A Yes, it's there.

6 Q It's in the flash drive?

7 A Correct.

8 Q Okay. So that has the correct percentages?

9 A Correct.

10 Q And was that the computer program that calculated

11 these percentage deferred numbers?

12 A No, that was actually -- we put this table

13 together in Excel after using Access to compute

14 the numbers, and the cell of the division was not

15 set correct for those. But it was on the right

16 column spot.

17 Q So you used both Access and Microsoft Excel for

18 the deferred voting study?

19 A Excel to put this in a table.

20 Q In a table for Dr. Gaddie's report?

21 A Yeah. Well, actually it's in our report and then

22 it's in his.

23 Q So were these -- was this written report the only

24 thing you provided to the client in terms of the

25 deferred voting study?

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1 A Yes, ma'am.
 2 Q And the underlying data for the table that you
 3 calculated, is that provided in the flash drive?
 4 A Yes.
 5 Q Okay. Were there any other assumptions or facts
 6 or data that you relied upon to calculate these
 7 numbers in the deferred voting study?
 8 A Just the data block assignment file. That's it.
 9 Q Did you perform these --
 10 A Yes.
 11 Q -- calculations?
 12 A Yes.
 13 Q And did you write the deferred voting study?
 14 A I did.
 15 Q When you submitted it to the client, did they have
 16 any edits?
 17 A They just noticed that the grid here -- they
 18 called back, and that's the only thing, the math
 19 was wrong. So that's the only mistake we made.
 20 You know, we may have made some typos. I stand
 21 corrected, but I can't recall what we would have
 22 changed.
 23 Q So are the only ways that California, Missouri,
 24 Ohio, Oklahoma, and Oregon are similar to
 25 Wisconsin are that they are large states and they

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1 have completed their redistricting already?
 2 MR. VOILAND: Object to the form of
 3 the question. There's no foundation for the
 4 question. It's beyond the scope of his
 5 testimony.
 6 Q And the Senate elections?
 7 A Beyond the scope --
 8 Q Well, you conducted the deferred voting study, so
 9 I'm just wondering if you -- it says here in this
 10 deferred voting study, *These six states have*
 11 *several commonalities*, and you list there,
 12 reasonably large states completed redistrict --
 13 redistricting already, and all senators do not run
 14 for re-election in 2012, even though their
 15 district for elections are staggered for the rest
 16 of the decade. I'm just wondering if there were
 17 any other commonalities that you know of that you
 18 did not include in your report?
 19 A No.
 20 Q And after you submitted this report to the client,
 21 did the client ask you for any other services with
 22 regard to the deferred voting study?
 23 A No, ma'am.
 24 Q Have they asked you for any other services in
 25 connection with this litigation aside from the

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1 deferred voting study and the December 14th
 2 report?
 3 A They have not.
 4 Q Did you talk to Dr. Gaddie about the deferred
 5 voting study?
 6 A Yes, I did. He was the one who noticed the cell
 7 was not dividing correctly. You do the math
 8 manually, you see that it didn't equal what it
 9 was.
 10 Q And what else did you talk to him about with
 11 regard to the deferred voting study?
 12 A That is it.
 13 Q Did you speak with him directly?
 14 A It was he and Patrick, the three of us, on the
 15 phone.
 16 Q And was that the only time you've been on the
 17 phone with Dr. Gaddie?
 18 A That was the only time I ever talked to him.
 19 Q Did you talk to Dr. Gaddie about your 12 -- your
 20 December 14th report?
 21 A Did not.
 22 Q And that includes e-mail, other forms of
 23 communication?
 24 A Not. He may have been cc'd on some e-mails that
 25 were sent to me from Patrick, but I wouldn't know.

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1 I've never directly e-mailed him back.
 2 Q Have you talked to Dr. Gaddie about his work on
 3 the redistricting for Wisconsin?
 4 A I have not.
 5 Q So in addition to the expert -- the rebuttal
 6 report for Dr. Gaddie, have you seen his first
 7 report?
 8 A I have not.
 9 Q Did you see his rebuttal report?
 10 A I did not. I -- no, I didn't. And you're talking
 11 about this report right here?
 12 Q Correct, the report.
 13 A First time I saw it.
 14 Q Marked 85. Did you ever see, prior to December
 15 2011, the maps that comprise Act 43 and Act 44?
 16 A No, I did not.
 17 Q That was the first time you had seen the
 18 redistricting maps for Acts 43 and 44?
 19 A Correct, whenever the client asked me to begin
 20 work.
 21 Q And so sitting here right now, you don't know
 22 whether or not you will be asked to testify; is
 23 that correct?
 24 A I do not.
 25 Q Aside from what's in your December 14th report and

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1 your corrected December 29th amendment to the
 2 December 14th report and the deferred voting
 3 study, are there any other opinions or conclusions
 4 that you reached and provided to the client?
 5 A No.
 6 MS. ARENDS: I have no further
 7 questions at this time. And I'm going to
 8 turn it over to Jackie, if you're ready.
 9 MS. BOYNTON: I'm only going to ask
 10 three questions on compactness, three on core
 11 constituency, and three on something else.
 12 THE VIDEOGRAPHER: I just need to
 13 get a mic on you.
 14
 15 EXAMINATION
 16 By Ms. Boynton:
 17 Q Okay. Mr. Diez, my name is Jackie Boynton. I'm
 18 one of the attorneys for part of this complaint,
 19 which is the complaint filed by Voces de la
 20 Frontera, and I just want to ask you a couple of
 21 clarifying questions on compactness. So
 22 looking at your -- the Foltz Exhibit 31 on
 23 compactness, on the current compactness for the
 24 Assembly Districts, I just have a question about
 25 the perimeter study out of the eight that you did

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1 through Maptitude. And for example, this is
 2 really for my own information.
 3 A Okay.
 4 Q Under District 8, it says 12.49, and then on the
 5 updated for Act 43 compactness for District 8, it
 6 says 13.07. Under the perimeter analysis, it
 7 looks like those two numbers are really the
 8 smallest perimeter numbers of that whole column of
 9 all 99 cell -- all 99 districts. Is that the
 10 correct interpretation of that information?
 11 A That is the smallest number of all the numbers in
 12 that column?
 13 Q Yes.
 14 A Yes.
 15 Q And so interpreting that would mean that is the
 16 smallest area, meaning it would be quite compact?
 17 A Based on this measure.
 18 Q Thank you. When you look at the perimeter test,
 19 does it illustrate anything about the boundaries
 20 besides what the actual length of the perimeter
 21 is?
 22 A Repeat the question, please.
 23 Q When you look at the perimeter test, does it say
 24 anything else about the boundaries of the district
 25 beyond the number that is the perimeter? Well,

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1 let me put it another way. Do you know what the
 2 actual boundaries are for District 8 either in the
 3 current form or in the Act 43 form?
 4 A Do I know the current boundaries or act? Not off
 5 the top of my head, but they're in the GIS system.
 6 Q Right. But in determining this, that has nothing
 7 to do with what the boundaries are. This is
 8 simply a number that represents size of perimeter?
 9 A I'm sorry, you have to ask the question again.
 10 Q When you analyze perimeter, it's the amount of
 11 space around the district?
 12 A Right.
 13 Q But it doesn't measure what the actual -- I mean,
 14 it doesn't have anything to do with what the
 15 actual boundary looks like; is that correct?
 16 MR. VOILAND: Object to the form of
 17 the question.
 18 A Once again, I'm not an expert.
 19 Q Okay. When you do these numbers, and you looked
 20 at that number, 12.47 for a boundary for
 21 District 8, did you also compare that to what the
 22 actual map looked like?
 23 A No, I did not.
 24 Q Okay. So you did not look at the actual maps?
 25 This figure is not connected to the actual maps;

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1 is that true?
 2 MR. VOILAND: Object -- object to
 3 the form of the question. It has to be
 4 connected to District 8, the figure for
 5 District 8. I'm not sure what you're asking.
 6 Q I'm asking if you've seen the configuration of how
 7 the District 8 is configured, in the current form
 8 and in the Act 43 form?
 9 A No, I have not.
 10 Q So you have not seen those maps?
 11 A No. I've seen the maps, but I don't recall those
 12 two districts specifically and what it looks like.
 13 Does that make sense?
 14 Q Yes. And I think you already testified about
 15 this, but when you did the comparison of
 16 compactness data, you have no opinion about what
 17 the difference -- different numbers mean; is that
 18 correct?
 19 A Correct.
 20 Q After you review all of this Maptitude data that
 21 you put in to do the figures on your eight test he
 22 is, do you then review all those numbers, or do
 23 you just assume that the Maptitude analysis is
 24 correct?
 25 A The only way I can -- there's no way to

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1 double-check them unless you know the formula, and
 2 you sit there and you calculate them by hand for
 3 all 99 districts and 33 districts, so you have to
 4 assume that Maptitude got it right.
 5 Q Okay. So you never review the numbers either for
 6 making an opinion about what the numbers mean?
 7 A No, I did not review these numbers to make an
 8 opinion or draw an opinion.
 9 Q All right. Thank you. Oh, okay. On core
 10 constituency, you mentioned that when you worked
 11 in Mississippi, that you did -- when you worked in
 12 Mississippi, did you do work that was drawing
 13 redistricting lines or helping to draw
 14 redistricting lines?
 15 A Helping to draw redistricting line, yes.
 16 Q And you mentioned that you used, one of the
 17 criteria was Section 2, Voting Rights Act
 18 information?
 19 A Section 5, yeah.
 20 Q And so you would factor in Section 2 Voting Rights
 21 Act in your analysis when you're drawing
 22 redistricting lines?
 23 A If the client asks for it, if there was a need,
 24 but I don't remember doing that in Mississippi,
 25 like factoring Section 2 in.

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1 Q When you did this analysis in your expert report,
 2 did you factor in any of the Section 2 Voting
 3 Rights Act information?
 4 A I was not asked to, and I just -- straight up
 5 demographics, and that's it.
 6 Q And again, did you reach any opinions from your
 7 core constituency numbers?
 8 A No, I did not.
 9 Q All right. I'm going to show you -- it's marked
 10 already as Exhibit 59 in the Gaddie -- in the
 11 Gaddie deposition. This is the complaint and the
 12 answers for the Voces de la Frontera segment of
 13 this lawsuit. Have you ever seen this document
 14 before?
 15 A I've never seen this document before. Hold on a
 16 second. I did see -- I never saw this one. I saw
 17 Gaddie's response, but not this one, no.
 18 Q So in my reading your December 14th report and
 19 your January 11th report, deferred voting study,
 20 and listened to your testimony, I don't see where
 21 any of your expertise and testimony relates to
 22 this complaint; would you agree with that?
 23 A I haven't read this complaint.
 24 Q So you have not rendered any opinions that have --
 25 that are in response to the complaint that you're

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1 looking at now?
 2 MR. VOILAND: Object to the form of
 3 the question. There is no foundation.
 4 Q So from your reviewing the complaint, is this the
 5 first time you have seen it?
 6 A This is the first time I've seen this document.
 7 Q So part of your opinions -- part of your expert
 8 testimony was not in response to this complaint;
 9 is that correct?
 10 MR. VOILAND: Object to the form of
 11 that question. There's no foundation.
 12 Q This complaint was not part of the materials you
 13 received from Reinhart or from Adam Foltz when you
 14 started your analysis; is that correct?
 15 A That's correct. Wait, repeat again. I've never
 16 seen this document. I've never read it.
 17 Q All right.
 18 MS. BOYNTON: Thank you. That's
 19 all I have. That's all my questions.
 20 MS. ARENDS: I have a couple more.
 21
 22 RE-EXAMINATION
 23 By Ms. Arends:
 24 Q Mr. Diez, when you're perform -- when you're
 25 drafting these -- when you drafted this report,

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1 the 12/14 report and the January 11th deferred
 2 voting study, did you make any notes on paper or
 3 on your computer anywhere?
 4 A I did not.
 5 Q So the entire file relating to this litigation is
 6 included on the flash drive that we received
 7 today?
 8 A Yes, it is.
 9 Q Have you seen any complaints such as the one that
 10 Jackie showed you related to this litigation?
 11 A I read Gaddie's response relative to the surname
 12 Hispanic testimony. That's the only one I read or
 13 seen.
 14 Q And is that part of his rebuttal report?
 15 A I didn't read his rebuttal report, so I don't know
 16 if that was part of it or not.
 17 Q Was it sent to you from Reinhart?
 18 A Yes, Patrick sent it to me, so I read it.
 19 Q And was that included in --
 20 A Should be.
 21 Q -- in the e-mail from Patrick to you --
 22 A Should be.
 23 Q And when did he that sent to you?
 24 A I don't know.
 25 Q And why did he send that to you?

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VIDEOTAPE DEPOSITION OF JOHN C. DIEZ, JR. 1/23/2012

1 A I don't know.

2 MR. VOILAND: Object to the form of

3 the question.

4 Q Why did he send you Dr. Gaddie's response, as you

5 titled it?

6 A I have no idea. He just wanted me to read it.

7 Q The client didn't ask you to do anything with it

8 other than to read it?

9 A No. Correct.

10 MS. ARENDS: Jackie, anything else?

11 MS. BOYNTON: No.

12 MS. ARENDS: I have no further

13 questions at this time. Thank you for your

14 time, Mr. Diez.

15 THE VIDEOGRAPHER: Is there any

16 further examination?

17 MR. VOILAND: I'll just have a

18 couple of questions.

19

20 EXAMINATION

21 By Mr. Voiland:

22 Q Mr. Diez, let me ask you a couple of questions

23 just to be sure we have this clear in terms of the

24 documents that you produced on the flash drive.

25 And there was -- do you recall getting some

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1 questions about did you have more than one

2 computer?

3 A Yes, I do.

4 Q Did you ever open certain documents on more than

5 one computer?

6 A Yes.

7 Q Okay. So let me give you an example. Let's say

8 you opened an e-mail on your home computer and you

9 opened an e-mail on your laptop, okay; is that a

10 fair assumption?

11 A Yes.

12 Q Now, when you downloaded your e-mail to the flash

13 drive and produced your e-mail, you produced all

14 of your e-mail relating to the case, correct?

15 A Correct.

16 Q But you didn't produce one copy from your home

17 computer and one copy from your desktop -- one

18 copy from your laptop?

19 A I did not.

20 Q You produced one copy of that?

21 A Correct.

22 Q But nevertheless, whether you opened a document on

23 one computer and another computer, you produced

24 all the documents relating to the litigation?

25 A Yes.

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1 Q And one other topic. When we were looking at the

2 core constituencies report?

3 A Uh-huh.

4 Q And you were asked questions about people being

5 moved from an old district to the new districts

6 under Act 43?

7 A Right.

8 Q Do you recall that? When your report identifies a

9 number associated with an old district, were there

10 necessarily that number of people in that old

11 district under the 2002 plan, or is that the

12 number of people in that geographic area as of the

13 time Act 43 is enacted?

14 A That was the number of people in that geographic

15 area at the time that the census bureau took its

16 count.

17 Q In 2010?

18 A Correct.

19 Q So it is not necessarily the number of people that

20 had been in that area back under the 2002 plan?

21 A Repeat the question.

22 Q So the number there -- the number that is

23 identified as being the number for the old

24 district is according to the 2010 census data, not

25 according to the 2002 plan, not according to what

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1 was in effect in 2002?

2 A The old districts are the '02 district line. Does

3 that answer your question?

4 Q Starts to.

5 A Okay. But this is the 2010 population.

6 Q Within that district line?

7 A Within old District 8, old District 9.

8 Q Okay.

9 MR. VOILAND: That's all. That's

10 all the questions that I have.

11 THE VIDEOGRAPHER: Ms. Arends?

12 MS. ARENDS: No further questions.

13 THE VIDEOGRAPHER: Ms. Boynton?

14 MS. BOYNTON: No. Thank you.

15 THE VIDEOGRAPHER: We are going off

16 the record, concluding the video deposition

17 of Mr. John Diez. The time is 1:00 p.m.

18 (Adjourning at 1:00 p.m.)

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VIDEOTAPE DEPOSITION OF JOHN C. DIEZ, JR. 1/23/2012

1 STATE OF WISCONSIN)

) ss.

2 COUNTY OF DANE)

3 I, BRANDÉ A. BROWNE, a Registered Professional
4 Reporter and Notary Public duly commissioned and
5 qualified in and for the State of Wisconsin, do
6 hereby certify that pursuant to subpoena, there came
7 before me on the 23rd day of January 2012, at 9:23 in
8 the forenoon, at the offices of Godfrey & Kahn, S.C.,
9 Attorneys at Law, 1000 North Water Street,
10 Suite 1700, the City of Milwaukee, County of
11 Milwaukee, and State of Wisconsin, the following
12 named person, to wit: JOHN C. DIEZ, JR., who was by
13 me duly sworn to testify to the truth and nothing but
14 the truth of his knowledge touching and concerning
15 the matters in controversy in this cause; that he was
16 thereupon carefully examined upon his oath and his
17 examination reduced to typewriting with
18 computer-aided transcription; that the deposition is
19 a true record of the testimony given by the witness;
20 and that reading and signing was not waived.

21 I further certify that I am neither
22 attorney or counsel for, nor related to or employed
23 by any of the parties to the action in which this
24 deposition is taken and further that I am not a
25 relative or employee of any attorney or counsel

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1 employed by the parties hereto or financially
2 interested in the action.

3 In witness whereof I have hereunto set my
4 hand and affixed my notarial seal this 24th day of
5 January 2012.

6

7

8

Notary Public, State of Wisconsin
Registered Professional Reporter

9 My commission expires
10 April 21, 2013

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Brandt, Karen J (15243)

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Eastern District of Wisconsin

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